



IN THE HIGH COURT OF HIMACHAL PRADESH,  
SHIMLA



ON THE 5<sup>th</sup> DAY OF SEPTEMBER, 2022  
BEFORE  
HON'BLE MR. JUSTICE AJAY MOHAN GOEL

CRIMINAL MISC. PETITION (MAIN) U/S 482 CRPC  
No.224 of 2022

**Between:**

NEERAJ GULATI SON OF SHRI  
R.C. GULATI, AGED ABOUT 58  
YEARS, RESIDENT OF HOUSE  
E-120, GREATER KAILASH-2,  
SOUTH DELHI-110048.

....PETITIONER.

(BY MR. ANUJ NAG, ADVOCATE)

AND

1. STATE OF H.P. THROUGH  
SECRETARY (HOME) TO THE  
GOVERNMENT OF HIMACHAL  
PRADESH.

2. STATION HOUSE OFFICER  
CID BHARARI, DISTRICT  
SHIMLA, H.P.

....RESPONDENTS.

(M/S SUMESH RAJ, DINESH THAKUR, SANJEEV SOOD,  
ADDITIONAL ADVOCATES GENERAL, WITH MR. AMIT  
KUMAR DHUMAL, DEPUTY ADVOCATE GENERAL)

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Whether approved for reporting?<sup>1</sup> Yes

Reserved on: 24.08.2022.

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*This petition coming on for orders this day, the Court passed the following:*

**J U D G M E N T** ◇

By way of this petition, filed under Section 482 of the Criminal Procedure Code (hereinafter to be referred as “Cr.P.C.”), the petitioner has prayed for the following reliefs:-

*“a) That the Hon’ble Court pass a direction, order for quashing/deleting the name of the petitioner wherever it is shown as a Suspect in the supplementary charge sheet i.e. Annexure P-3 and discharge the petitioner with respect to the offences mentioned in the FIR 09/2016 dated 03.04.2016 P.S. CID Bharari, Shimla (Annexure P-1).”*

**2.** The case of the petitioner is that an FIR was registered in Police Station CID Bharari, District Shimla, H.P., i.e. FIR No.09/2016, dated 03.04.2016, under Sections 420, 406, 409, 411, 467, 468, 471, 201, 217, 218, 120B of the Indian Penal Code and Sections 13(I) d, 13(I) d (ii), 13 (I) (e) and 13(2) of the Prevention of Corruption Act, against the Indian Technomac Company Limited and its officials. The petitioner had worked for some time before the registration of the FIR, as the Company Secretary of the said Company for a period of about fourteen months till 16.03.2011. At the relevant time, the Company was run and controlled by Shri Rakesh Kumar Sharma, who was the prime accused and also the Managing Director of the Company. The anticipatory bail petition filed by the petitioner before this Court was allowed and anticipatory bail was granted to the petitioner on 19.08.2019. The Investigating

Agency filed Supplementary Charge Sheet, dated 19.03.2020 in the Court of learned Special Judge-II, Nahan, District Sirmaur, H.P. In the course of investigation, Investigating Officer verified that the petitioner had worked as a Company Secretary for a brief period of fourteen months upto 16.03.2011 in the Company run and controlled by Rakesh Kumar Sharma. In terms of the Charge Sheet, dated 22.11.2018, the respondent has mentioned therein that the Company accounts were functioning properly till 31.03.2012. According to the petitioner, he was not in the employment of the accused Company after 16.03.2011, i.e. much before 31.03.2012. The petitioner claims to be a Company Secretary, who is also enrolled as a Lawyer. He has been attending the learned Trial Court physically since its reopening, though he has not been summoned by the learned Trial Court. This is in terms of the directions which have been passed by this Court in the bail petition filed by the petitioner. It is further the case of the petitioner that as per the Supplementary Charge Sheet, dated 19.03.2020, the petitioner has been named as a 'suspect' in the same, copy whereof is appended with the petition as Annexure-P3. Further, as per the petitioner, it is evident from the perusal of the Charge Sheet that no evidence has come forth against the petitioner to establish his involvement in the offences mentioned in the FIR and accordingly, he has not been cited as an accused. The grievance of the petitioner is that the act of the

respondents of mentioning the petitioner as a suspect in the Supplementary Charge Sheet is illegal, arbitrary and detrimental to his legal rights and it is in this background that the petition stands filed, praying for the relief already mentioned hereinabove.

**3.** Learned counsel appearing for the petitioner has argued that naming of the petitioner as a 'suspect' in the Police Report, filed under the provisions of Section 173 of Cr.P.C. is not sustainable in the eyes of law, for the reason that it is settled law that the trial is always of an accused and once the investigation has demonstrated that the petitioner is not an accused and he has not done anything so as to make him an accused in terms of the sections mentioned in the FIR, reflection of the name of the petitioner as a 'suspect' in the Charge Sheet is complete miscarriage of justice and is a travesty of justice and in case the FIR in issue is not ordered to be quashed against the petitioner, then the petitioner will suffer irreparable loss. Learned counsel has relied upon the judgments of the Hon'ble High Court of Judicature at Bombay, in *Criminal Writ Petition No.3143 of 2009*, titled *Gyanchand Verma Versus Sudhakar B. Pujari & others*, decided on 24.01.2011 and also in *Criminal Writ Petition No.3143 of 2009*, titled *Gyanchand Verma Versus Sudhakar B. Pujari and others*, decided on 21.04.2011, reported in 2011 (6) *Mh.L.J.* 904.

**4.** The petition is resisted by the respondent-State, *inter alia*, on the ground that the mentioning of the name of the petitioner

as a 'suspect' in the Charge Sheet does not causes any prejudice to the petitioner and his name has been so reflected in view of the statutory provisions of Section 173 of Cr.P.C. and the standard form, in terms whereof the final report is submitted by the Investigating Officer.

**5.** Learned Additional Advocate General has argued that once it has been clearly mentioned in the report that the petitioner has not been charge sheeted and that no evidence has come forth to establish his involvement in the preparation of the fake record and the petitioner is not cited as accused for want of sufficient corroborative and supportive evidence, there is no need for the petitioner to file the present petition, as the same does not causes any prejudice to the petitioner as alleged and reference of the petitioner in the Charge Sheet as a 'suspect' is more procedural in nature than anything else. Accordingly, a prayer has been made for dismissal of the petition.

**6.** I have heard learned counsel for the parties and have also carefully gone through the petition as well as the documents appended therewith.

**7.** The report, which has been filed by the Investigating Officer, under Section 173 (8) of Cr.P.C. in the case in hand is appended with the petition as Annexure P-3. In Column-12 thereof, which deals with particulars of accused persons not charge sheeted,

the name of the petitioner alongwith certain other persons is mentioned. Column-12 of the report reads as under:-

“12. Particulars of accused persons-not charge sheeted (suspect)-(Use separate sheet for each suspect)

**S.No.9**

- (i) Name **Sh.Neeraj Gulati** Whether verified
- (ii) Father's/Husband's Name **Late Sh. R.C. Gulati**
- (iii) Date/Year of birth:
- (iv) Sex **Male**
- (v) Nationality **Indian**
- (vi) Passport No.:
- Date of Issue: Place of Issue:
- (vii) Religion **Hindu**
- (viii) Whether SC/ST/OBC:
- (ix) Occupation: **Company Secretary**
- (x) Address: **E-120, Greater Kailash, Pocket-II, New Delhi, 9811257531**  
Whether verified.
- (xi) Provisional criminal No.:
- (xii) Suspicion approved:
- (xiii) Status of the accused (suspect):  
Bailed by police/**Bailed by Court**/Judicial custody/  
(tick/applicable portion)
- (xiv) Under Acts & Sections.
- (xv) Any Special remarks including- He has signed the balance sheet of the ITCOL for FY2009-10. Financial documents/ balance sheets of Mumbai & Kolkata promoter companies were received and processed during his tenure. He has carried out filing of documents in the office of Registrar of Companies as part of his job. Enrollment of company employees as

*Directors in various promoter companies of ITCOL etc. at the directions of absconding accused Rakesh Kumar Sharma also happened during his posting period. No evidence has come forth to establish his involvement in preparation of fake record. Suspect is not cited as accused for want of sufficient corroborative and supportive evidences.”*

It is the word ‘suspect’, which has been mentioned in this Column, as also in the body of the explanation given thereunder, which the petitioner is aggrieved by.

**8.** Before proceeding further, it is pertinent to refer to Section 173 of Cr.P.C. This Section, *inter alia*, provides that every investigation under relevant Chapter-12 of Cr.P.C., shall be completed without unnecessary delay and as soon as it is completed, the officer in charge of the Police Station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating:-

- (a) the names of the parties’
- (b) the nature of the information’
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and, if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under section 170.

[(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or Section 376E of the Indian Penal Code.

**9.** A careful perusal of Section 173 of Cr.P.C., 'in general' and Section 173(2) of Cr.P.C., 'in particular', demonstrates that what has to be provided in the report by the Investigating Officer, are the names of the parties, nature of the information, names of the persons who appeared to be acquainted with the circumstances of the case, whether any offence appears to have been committed and if so, by whom, whether the accused has been arrested, whether he has been released on bail, whether he has been forwarded in custody and whether the report of medical examination of the woman has been attached, where investigation relates to an offence under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or Section 376E of the Indian Penal Code. The statute nowhere requires or mandates that any reference of any 'Suspect' is to be there in the report. This Court reiterates that the Investigating Officer has to mention the name of the accused as also the names of the persons who appeared to be acquainted with the circumstances of the case, but there is no provision that the same has to refer to someone in this report as a 'Suspect'.

**10.** In this background, the Court will now refer to the judgments of the Hon'ble High Court of Judicature at Bombay, relied



upon by learned counsel for the petitioner. In *Criminal Writ Petition No.3143 of 2009*, titled *Gyanchand Verma Versus Sudhakar B. Pujari & others*, decided on 24.01.2011, there was a difference of opinion between the two Hon'ble Judges therein, on the question whether naming any person as a 'suspect' in the Police Report/Charge Sheet, filed under Section 173 (2) of Cr.P.C. and more so, under Section 173 of Cr.P.C. was just, fair, proper and in consonance with the procedure established by law? The view, which was taken by one of the Judges, Hon'ble Mr. Justice A.M. Khanwilkar, as he then was, was as under:-

*"14. Thus, the report under Section 173(2) is an intimation cum opinion of the Investigating Officer submitted to the Magistrate. The Magistrate is apprised of the fact that investigation into a cognizable offence has been undertaken. Further, during such investigation he (the Investigating Officer) has been able to procure "sufficient material" referred to therein for the trial of the named accused by the Court.*

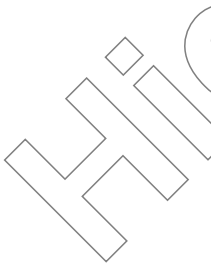
*Besides, the stated evidence was sufficient for the Court to take cognizance of the offence. Nothing more need be stated in the said report. To put it differently, the purpose of the report under Section 173(2) or 173(8) and more so the final report is to present the opinion of the Investigating Officer that as far as he is concerned, he has completed the investigation and has nothing more to contribute; and that the material gathered by*

him is "sufficient material for the trial of the named accused" by the Court. The Court takes cognizance of the offence on the basis of this report and proceeds against the persons so named as accused by the Investigating Officer. Notably, the trial can be of the accused and not of any suspect. A priori, in my view, since the 22 wp314309 purpose of the report under [Section 173\(2\)](#) is to ignite a trial only against the accused-against whom sufficient material has been gathered during the investigation to show his involvement in the crime, in the scheme of things, naming any one as suspect, is neither postulated by [Section 173\(2\)](#) or 173(8) nor would be just and fair.

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If the answer is no, as I am inclined to hold, it will be naive to suggest that the person should be still named as suspect in the police report submitted to the Court. Take a case where the sole accused named in the police report were to be discharged by the trial Court. Can, in such a case, the Court continue with the trial (in absence of any named accused) on the assumption that it has already taken cognizance of the offence and the Investigating Officer, in his police report filed under [Section 173\(2\)](#) or 173(8), has additionally mentioned the name of a person as suspect? Indubitably, there can be no trial against a suspect.

The trial is only against the persons named as "accused" in the police 27 wp314309 report or against



whom charges have been framed by the Court after taking cognizance of the offence. ◇

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33. For the aforesaid reasons, the relief claimed in the Petition ought to succeed. That, however, does not mean that the Petitioner cannot be proceeded against at the appropriate stage if the fact situation so warrants, including by resorting to further investigation 55 wp314309 under [Section 173 \(8\)](#) of the Cr.P.C. or to proceed against him under [Section 319](#) of the Cr.P.C., if it appears from the evidence during the course of inquiry into or trial that even though he is not already named as accused has committed offence for which he could be tried together with the named accused. Those aspects will have to be considered at the appropriate stage. The same are left open.”

11.

The other Hon'ble Judge held as under:-

“The trial Court has option to proceed further if there is ground to presume that the accused has committed the offence; in that case it can decide to frame the charge in the trial even on the basis of suspicion, if it is strong and grave enough to lead the court to believe involvement of the accused before it. In my opinion, therefore, without suppressing any material fact from the Court the name of suspect by whom the offence in question appears to have been committed must be mentioned in the final report, with reasons for such final opinion of the investigating officer and material supporting it must be disclosed to the trial Court by the

investigating officer in his final police report to the Court (Special Court in this case) giving all the particulars and vital information under section 173 of the Cr.

101 wp314309 P.Code. In the result no fault can be found with the investigating officer if he names the person as suspect pending the investigation against him, who in his opinion appears to have committed the offence but could not be charge sheeted for want of an opportunity to arrest and interrogate him. At this stage when investigation is still pending against the Petitioner it would be premature to exonerate the Petitioner on the pretext of infringement of his reputation. The question which is raised of Personal liberty or fundamental right of the Petitioner is to be examined on the basis of finding as to whether due process of law and procedure has been followed as against him. It would amount to pre-judging the question, bearing in mind that the petitioner has continued to dodge the investigating officer, by his ingenuity to file the writ petitions and deprived the investigating officer from arresting and investigating against him for prolonged period, while petitioner was armed with interim order 'not to arrest him'. The answer to the question raised above therefore has to be in the negative. But, to have a speedy trial is implicit in Art.

21. as fundamental right of any accused in a serious criminal case and therefore the trial court shall proceed, to hear, try and decide the case efficiently in accordance with law and on its own merits. As the trial is pending

since long, the learned special Judge in seisin of the 102 wp314309 trial shall make endeavour to dispose of the case expeditiously, as early as possible from the date of receipt of a copy of this order. The petitioner has alternative efficacious remedy to plead for his discharge from the case. The trial Court can always consider such a plea. The petition shall stand dismissed accordingly. Rule is discharged. Certified copies of the affidavits filed in this petition along with copy of this order shall be sent to the Special Court for its information and action as it may deem fit under the circumstances.”

**12.** In view of the difference of opinion between the two Hon'ble Judges, the matter was referred to Hon'ble 3<sup>rd</sup> Judge. The view, which was taken by Hon'ble 3<sup>rd</sup> Judge, as is reported in *Gyanchand Verma Versus Sudhakar B. Pujari and others, 2011 (6)*

*Mh.L.J. 904*, was as under:-

“7. Section 173 of Cr. P. C. empowers the Officer in charge of Police Station to file a final report before to a Magistrate. The particulars which are to be mentioned in the said report are provided under Section 173(2)(ii) Cr.P.C. The particulars, therefore, which have been mentioned in the charge-sheet have to be in consonance with the statutory provisions or rules framed thereunder. The State Government or the Central Government do not have the right to prescribe the particulars which are not in consonance with the provisions of Section 173(2)(i). It is an admitted position that the present petitioner has not been mentioned as an accused either in FIR or at any

stage during the investigation or further investigation which was carried out till the final charge-sheet was filed. After filing of the first charge sheet, nine charge-sheets have been filed. In none of these charge-sheets, the petitioner has been mentioned as an accused. It is also an admitted position that the petitioner was not arrested at any time. Though it is stated by respondent No.1 that he wanted to arrest the petitioner, fact remains that the interim order was in force. The short question which fell for consideration was ? whether petitioner can be continued to be shown as a suspect after conclusion of the investigation? The learned Single Judge Mr. Justice A. M. Khanwilkar, in my view, has rightly relied upon the judgment of the Apex Court in the case of K. Veeraswami (supra) as well as judgment of the Division Bench of this Court in the case of Rajni Patil (supra). In K. Veeraswami (supra) Apex Court has clearly held that charge sheet should contain the particulars, which are mentioned in Section 173(2)(i) Cr. P.C. and in the case of Smt. Rajni Patil (supra), a fine distinction in law between a suspect and an accused has been made. The learned Single Judge, Mr. Justice A. P. Bhangale has not taken into consideration the paragraphs on which the reliance was placed by the petitioner in support of his case and therefore, in my humble view, the learned Single Judge appears to have misconstrued the ratio of two judgments on which reliance was placed by the petitioner. Be that as it may. I am fully in agreement with the conclusion which is drawn by Mr. Justice A. M. Khanwilkar.

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9. It is apparent that these Forms were amended for the purpose of internal administration of the Police Officers so that whenever there is any change in the Investigating Officer, the new incumbent would be in a position to understand the stage of investigation and the steps which have been taken by the Investigating Officer or in cases where initial charge-sheet is filed under Section 173(2)(i), an application is filed for further investigation under Section 173(8), so that new Officer would know what was in the mind of the earlier Investigating Officer. It appears that the persons were to be shown as suspects so that a further investigation in that direction can be carried out by the subsequent newly appointed Investigating Officer. These Forms, in my view, do not have statutory force. The submissions made by respondent No.1 that these Forms have statutory force in view of Section 173(2)(ii) Cr. P. C., cannot be accepted.

10. Apart from that, it is always open for the trial Court after trial begins to issue summons to any person as an accused if it comes to the conclusion that the evidence which is brought on record clearly shows that he is involved in the commission of the offence on the basis of material which is placed before him and the said summons can be issued under section 319 of the Criminal Procedure Code and he can be added as an accused at any stage, in accordance with the law. The apprehension expressed by respondent No.1 is, therefore, misconceived. In the result, there is no material at this stage, since the petitioner has not been mentioned as an accused in the

*charge-sheet, he cannot be continued to be shown as a suspect act after final investigation report has been tendered. In this view of the matter, respectfully, I am in agreement with the view taken by the Single Judge, Mr. Justice A.M. Khanwilkar and disagree with the opinion expressed by the Single Judge, Mr. Justice A.P. Bhangala.”*

**13.** This Court concurs fully with the findings which have been returned by the Hon'ble High Court of Judicature at Bombay referred to hereinabove, in terms whereof, it has been held that no one can be referred to as a 'suspect' in the Final Report, which is to be so filed by the Investigating Officer, in terms of Section 173 of Cr.P.C. This Court is of the considered view that in terms of the scheme of statute, the Investigating Officer has to disclose the name of the persons who are acquainted with the facts of the case in the report, as also the names of the parties and he also has to clearly spell out the name or names of the accused in light of the investigation, which stands carried out. However, there is no provision in the statute of referring to someone connected with the matter against whom no evidence is there that he has been involved in the commission of the offence as an accused, as a 'suspect. When in the course of investigation, the Investigating Officer has not found anything incriminating against someone, then reflecting him or her as a 'suspect' in the Investigation Report, is not acceptable in law, as the word 'suspect' undoubtedly casts a stigma on such a person. Of



course, in the course of trial, if the Court comes to the conclusion that someone other than those named as accused in the report, may also be guilty of the commission of offence, then the procedure as is prescribed in Section 319 of Cr.P.C., can be resorted to. However, in the Final Report prepared under Section 173 of Cr.P.C., none can be reflected as a 'suspect'.

**14.** Accordingly, in view of the findings returned hereinabove, this petition succeeds and it is ordered that the word 'suspect', as it finds mentioned in Column-12 of the Investigation Report, is ordered to be expunged wherever appearing and the Investigating Officer shall file a fresh report after carrying out necessary corrections in the same. The respondent-State shall also be well advised to issue necessary directions that the Form, in which the Investigation Report is submitted to the learned Magistrate, is in consonance with the provisions of Section 173 of Cr.P.C. and the word 'suspect' should not be used therein with reference to someone who has not been found to be an accused in the course of investigation. The petition stands disposed of in above terms, so also the pending miscellaneous applications, if any.

**(Ajay Mohan Goel)**  
**Judge**

September 05, 2022  
(Rishi)