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(9) It is, thus, apparent that the two categories of employees are not equally placed. Granting them scales of pay at par with the employees of the various departments of the Government would be treating unequals as equals. That would be violative of Article 14 and 16 of the Constitution. As at present, the action of the respondents in declining the claim of the petitioners is based on good reasons in law as well as on facts. Consequently, it calls for no interference under Article 226 of the Constitution.

(10) No other point has been urged.

(11) In view of the above, there is no merit in these writ petitions. These are, consequently, dismissed. However, in the circumstances of these cases, there will be no order as to costs.

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J.S.T.

*Before V. S. Aggarwal, J.*

RAJOEL SINGH,—*Petitioner.*

*versus*

THE STATE OF HARYANA AND OTHERS,—*Respondents.*

CrI. M. 16147/M of 1996.

28th January, 1997.

*Code of Criminal Procedure, 1973—S. 173—Challan submitted against certain persons—No fresh evidence or document collected after submission of challan—State filing a supplementary challan—Supplementary challan quashed.*

*Held, that once report contemplated under sub-section (2) of Section 173 Cr.P.C. has been submitted, further investigation is not barred. The police can investigate further, take further evidence and forward such report to the Magistrate and if no further evidence or documents have been considered, then supplementary report in the form of a supplementary challan cannot be filed. It is an admitted fact that after the challan was submitted under sub-section (1) and (2) of Section 173 Cr.P.C., no further investigation has been held. It is not clear as to what were the compelling reasons those prompted the State in filing a supplementary challan. The supplementary challan filed against the petitioner is quashed.*

(Paras 5 & 7)

K. K. Aggarwal, Advocate, for the Petitioner.

U. K. Agnihotri, Advocate, for the Respondents.

#### JUDGMENT

V. S. Aggarwal, J.

(1) This is a petition filed by Rajpal Singh (hereinafter described as 'the petitioner') seeking quashing of the supplementary challan filed in FIR No. 125 dated 18th March, 1995 with respect to offences punishable under Sections 457/380/120-B IPC. Police Station, Jagadhari.

(2) It is alleged that on the night intervening 17th/18th March, 1995 a theft took place in the house of Smt. Krishna Wanti wife of Krishan Lal. Ashok Kumar Chawla had given an application in writing which became the basis of the first information report. It was registered with respect to the offences punishable under Sections 457 and 380 IPC. The investigation was conducted. A challan was presented against two persons namely Havinder Kumar @ Pahadi son of Ram Chander and Brahampal Singh son of Tungal Singh. The challan was presented on 16th November, 1995. While the matter was pending in court, a supplementary challan was presented against the petitioners.

(3) Petitioner contends that submission of the supplementary challan is an abuse of the powers of the court and deserves to be quashed. This is for the reason that name of the petitioner finds no mention in the first information report. During investigation supplementary statements were recorded. No allegation of any kind had been made against the petitioner in those disclosure statements. No recovery has been effected from the petitioner. In the absence of any evidence and further investigation, challan could not be presented.

(4) In the reply filed, the petition has been contested. It is admitted that initially challan against Ravinder Kumar and Brahampal Singh had been prepared. It was submitted in court. When Ravinder Kumar had been arrested, he made a disclosure statement that he was caught by Constable Brahampal Singh with stolen property and was produced before petitioner Rajpal Singh. Petitioner was posted in Police Station, Brahampuri. Ravinder Kumar was let off by the petitioner. Petitioner gave some property

to Constable Brahampal Singh and kept the rest of it. On basis of the disclosure statement made by Ravinder Kumar, Brahampal Singh accused was also arrested. He got recovered some stolen property. When petitioner came to know about the disclosure statements made by Ravinder Kumar and Brahampal Singh, he managed to get the remaining stolen property recovered from accused Brahampal Singh, by keeping the property in his house. Petitioner assured him to bear all the expenses in defending Brahampal Singh in court.

(5) The only submission made during the course of arguments was that once the challan had been submitted in court, then in the absence of any further investigation, a supplementary challan against another person could not be filed. To appreciate the said contention, reference can well be made to the provisions of Section 173 Cr.P.C. It refers to the report of the police officer on completion of investigation. Sub-sections (1), (2) and (8) of Section 173 Cr.P.C. read as under :—

“173. Report of police officer on completion of investigation.—

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) (i) 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 forwarded in custody under Section 170.

(ii) The officer shall communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

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- (8) 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)."

Perusal of the said provisions show that the investigation has to be completed at the earliest and *when the investigation is completed*, a report has to be forwarded to the Magistrate in the prescribed proforma. Sub-section (8) of Section 173 was added in the new Code and in this regard the 41st Report of the Law Commission (Chapter 14, Clause 23) reads :-

"A report under Section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report, under Section 173, comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the Magistrate concerned. It appears, however, that courts have sometimes taken the narrow view that once a final report under Section 173 has been sent, the police cannot touch the case again and reopen the investigation. This view places a hindrance in the way of the investigating agency which can be very unfair to the prosecution and, for that matter even to the accused. It should be made clear in Section 173 that the competent police officer can examine such evidence and send a report to the Magistrate. Copies concerning the fresh material must of course be furnished to the accused."

Bare reading of the report of the Law Commission gives us sight as to why sub-section (8) of Section 173 Cr.P.C. was added in the Code of Criminal Procedure, 1973. To ensure that there is no hindrance in the investigation after the report is submitted, it permitted further investigation in this regard. Sub-section (8) of Section 173 Cr.P.C. makes the position clear. Once report contemplated under sub-section (2) of Section 173 Cr.P.C. has been submitted, further investigation is not barred. He can investigate further, take further

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evidence and forward such report to the Magistrate. In other words, it is necessary that further evidence or documents should be considered. If no further evidence or documents have been considered, then supplementary report in the form of a supplementary challan cannot be filed.

(6) In this regard one can seek support from the decision of the Patna High Court in the case *Resham Lal Yadav and others v. State of Bihar* (1). Dealing with a similar situation, the court held that without collecting further evidence, the supplementary challan could not be filed. The precise findings read :—

“Learned counsel for the State could not point out any provision in the Code under which a supplementary charge-sheet can be submitted without further investigation and fresh evidence. In a situation like this, the prosecution may take recourse to the provisions of Section 319 of the Code which provides that where in the course of any inquiry into or trial of any offence it appears from the evidence that any person not being an accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. If, therefore, there is any evidence against the petitioners, it is always open to the prosecution to lead evidence at the trial and it will be for the trial Court to proceed against such persons for the offence which they appear to have committed. So far as the present case is concerned, I am of the opinion that a subsequent charge-sheet could not be submitted without further investigation by the police and without obtaining further evidence against the petitioners. That being so, the impugned order dated 27th August, 1979 must be set aside.

Same was the view of Orissa High Court in the case of *Kunjalata Dei v. State of Orissa* (2). It was held :—

“If the officer-in-charge obtains further evidence oral or documentary he shall forward to the Magistrate a further

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(1) 1981 Cr.L.J. 976.

(2) 1985 Cr.L.J. 1047.

report or reports regarding such evidence in the form prescribed; and the provisions of sub-section (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). So supplementary charge-sheet cannot be submitted without making further investigation and without obtaining further evidence oral or documentary in respect of an offence. Learned counsel for the petitioner cited a decision reported in 1981 Cr.L.J. (Pat) (*Resham Lal Yadav v. State of Bihar*) in support of his contention. In that case no further investigation was at all done before submission of the supplementary charge-sheet, and it has been held that supplementary charge-sheet cannot be submitted without making further investigation and without obtaining further evidence."

(7) The Investigation Officer was present. During the course of arguments, it was pointedly asked as to whether after the challan was submitted, any fresh evidence or documents were collected. The answer was in the negative. Thus, it is an admitted fact that after the challan was submitted under sub-sections (1) and (2) of Section 173 Cr.P.C., on further investigation had been held. It is not clear as to what were the compelling reasons those prompted the State in filing a supplementary challan. In the absence of any fresh material forthcoming, submission of supplementary challan was totally contrary to the provisions of Section 173 Cr.P.C. I find no reason to differ with the view point of Patna and Orissa High Courts.

(8) For these reasons, the petition is allowed. The supplementary challan filed against the petitioners is quashed. However, by way of abundant caution it is made clear that nothing would restrain the further investigation in accordance with law that could be taken. Nothing would also restrict the Court for *suo motu* taking cognizance under Section 190 Cr.P.C. or subsequently in accordance with law under Section 319 Cr.P.C.

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S.C.K.