

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

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2026:PHHC:121038



CRM-M-17205-2021 (O&M)
Date of decision : 31.08.2026

Salwinder Singh**...Petitioner****Versus****State of Punjab and others****...Respondents****CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA**

Present:- Mr. H. S. Randhawa, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Sr. DAG, Punjab.

Mr. Ankur Jain, Advocate
for respondents No. 2 to 4.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure (*for short 'Cr.P.C.*) seeking quashing of order dated 25.03.2021 (*Annexure P-5*) passed by the Court of learned Additional Sessions Judge, Tarn Taran in case arising out of FIR No.151 dated 12.10.2014, registered at Police Station Sarhali, District Tarn Taran, under Sections 302, 201, 120-B, 148 and 149 IPC, whereby the application moved by the petitioner seeking summoning of respondents No.2 to 4 to face trial along with the other accused was dismissed. The petitioner has further prayed that the said application be allowed and respondents No.2 to 4 be summoned to face trial in accordance with the supplementary report submitted pursuant to the re-investigation ordered by this Court.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR was registered on the basis of the statement recorded by the petitioner/complainant Salwinder Singh alleging therein that he was an agriculturist and had one son, namely, Gurjant Singh, aged about 21 years, besides five daughters. On 12.10.2014, he, his son Gurjant Singh, his servant Swaran Singh and his brother-in-law's son Satnam Singh had gone to Grain Market, Sarhali, where their paddy crop had been brought. As the paddy had not been auctioned, they put a tarpaulin over the heap and thereafter proceeded towards their farmhouse on motorcycles. His son Gurjant Singh was driving a motorcycle bearing registration number PB-46-L-7159, on which Swaran Singh was sitting as pillion, whereas the petitioner was sitting on the pillion of the motorcycle being driven by Satnam Singh. They left the Grain Market at about 6:30 p.m., with Gurjant Singh and Swaran Singh ahead of the petitioner and Satnam Singh. When they were about 200 yards short of the GT Road at about 7:00 p.m., the petitioner saw Balbir Singh armed with a rifle; Jarmanjit Singh armed with a kirpan; Stalinjit Singh armed with a datar; Uday Singh armed with a datar; Gurdev Singh armed with a datar; Gurcharan Singh armed with a datar; Chamkaur Singh armed with a kirpan and Sukhraj Singh armed with a datar along with about 78 other persons armed with datars and kirpans, standing on the road. The complainant further alleged that on seeing Gurjant Singh on the motorcycle, Balbir Singh raised a lalkara asking others to catch him and teach him a lesson for having quarrelled with them. On hearing the lalkara, Jarmanjit Singh, Stalinjit Singh, Uday Singh, Gurdev Singh, Gurcharan Singh, Chamkaur Singh, Sukhraj Singh and the unidentified persons started causing injuries to Gurjant Singh. The petitioner and Satnam Singh, out

of fear, stepped back and raised an alarm. Thereupon, the assailants fled towards Harike on the GT Road via Canal Minor Bridge Khara in cars and motorcycles, carrying their weapons. The petitioner and Satnam Singh then proceeded towards the place of occurrence and found Swaran Singh lying injured on the road and Gurjant Singh lying in the paddy field near the road with numerous injuries. Gurjant Singh died at the spot. The petitioner called his brother-in-law Sukhdev Singh and his son-in-law Dogar Singh. The police station was telephonically informed about the incident. The petitioner stated that there had been an earlier dispute between his son and the assailants and alleged that all the accused, in furtherance of their common intention, had murdered his son by causing injuries to him.

3. After registration of the FIR, investigation proceedings were initiated. Accused/respondents No. 2 and 3, namely Stalinjit Singh and Gurdev Singh, were arrested on 12.12.2014. Proceedings for declaring the remaining accused as proclaimed offenders were initiated. An application was also submitted by the father of respondent No.4-Gurcharan Singh alleging that Gurcharan Singh had been falsely implicated on account of enmity. The DSP, Sub-Division Patti, conducted an inquiry and found Gurcharan Singh innocent. The said report was forwarded to the SSP, Tarn Taran, who agreed with the same. In the meantime, however, Gurcharan Singh was summoned by the learned Court as additional accused under Section 319 Cr.P.C.

4. On 19.01.2015, co-accused Balbir Singh, Jarmanjit Singh, Chamkaur Singh, Uday Singh and Sukhraj Singh were declared proclaimed persons by the Court of learned Judicial Magistrate First Class, Tarn Taran.

Thereafter, on 21.01.2015, challan qua other accused was presented before the learned Court on 12.02.2015.

5. In the meantime, the petitioner had approached this Court by filing a petition bearing number **CRM-M-41639-2014**, complaining, inter alia, regarding the investigation, arrest of the accused and protection of himself and his family members. Initially, on 22.09.2016, this Court disposed of the said petition with a direction for an inquiry by the Inspector General of Police, Crime, Punjab, within 45 days, and stayed the proceedings during the subsistence of the inquiry. As the petitioner alleged non-compliance with the aforesaid directions, he filed **CRM-30012-2017** seeking modification/recalling of the earlier order. The concerned Inspector General of Police, Crime, Punjab, was summoned by this Court. On 18.12.2017, the said Officer appeared before this Court and made certain statements regarding the inquiry and the status of the proclaimed offenders. The petitioner subsequently produced material before this Court which, according to him, contradicted the stand taken by the officer. This Court passed further orders on 08.02.2018 and 22.02.2018, requiring the State to verify the material and furnish the necessary information.

6. Thereafter, on 27.03.2018, this Court declared the status report submitted by the police to be non-est in law and directed that the trial be proceeded with on the basis of the final report submitted by the investigating agency. The Court also directed expeditious conclusion of the trial. Thereafter, on 06.04.2018, an FIR bearing No.36 was registered at Police Station Sarhali under Sections 307, 341, 148 and 149 IPC and Sections 25/27 of the Arms Act against the petitioner and others. Alleging that the said FIR was a result of mala fide and pressure tactics, the petitioner approached this Court by filing

CRM-M-19771-2018, in which notice of motion was issued and the State was directed to file a status report, vide order dated 10.05.2018. The petitioner also filed another petition bearing number **CRM-M-23160-2018** alleging threats to himself and his family and pressure upon the petitioner and witnesses for compromising the murder case. On 29.05.2018, this Court directed the SSP, Tarn Taran, to ensure the safety of the petitioner and his family and further directed the trial Court to record the statements of the eye-witnesses on the next date positively.

7. The matter thereafter came up before this Court on 31.07.2018. This Court, in the presence of the learned State counsel and the police officer assisting the State, directed that, in the circumstances, the passing of the final judgment by the trial Court would remain stayed till the next date of hearing. The matter was adjourned to 05.09.2018. However, despite the aforesaid order, the learned trial Court proceeded with the matter and on 04.08.2018, acquitted respondents No. 2 to 4, Gurdev Singh, Stalinjit Singh and Gurcharan Singh of the offences under Sections 302, 148, 149 and 120-B IPC, by extending benefit of doubt. When the matter again came before this Court on 05.09.2018, it was informed that despite the order dated 31.07.2018 staying the pronouncement of the final judgment, the trial had concluded on 04.08.2018. The learned State counsel stated that the order dated 31.07.2018 could not be communicated to the authorities as it was uploaded on the website only on 07.08.2018. This Court, however, noted that the order had been passed in open Court in the presence of the learned State counsel and the officer assisting her and that they were duty-bound to ensure compliance with the Court's directions. During the subsequent proceedings, the petitioner alleged that the prosecution witnesses

had been won over and that the trial had been conducted in a perfunctory manner. On 02.07.2019, this Court considered the allegations regarding the manner in which the trial had been conducted, the statements of witnesses allegedly having been made under pressure and the conduct of the State. The petitioner sought retrial and the trial Court record was requisitioned.

8. After the acquittal, Stalinjit Singh, who had already been acquitted, filed **CRM-27982-2019**, opposing any order of retrial. Ultimately, on 06.12.2019, this Court disposed of the aforesaid proceedings and directed re-investigation of the entire case by Shri Kanwar Vijay Pratap Singh, Inspector General of Police, Punjab. This Court recorded serious concerns regarding the investigation, the conduct of the prosecution, the circumstances in which the accused had been allowed to remain at large despite being proclaimed offenders, the alleged influence exercised upon the witnesses and the failure to communicate the order dated 31.07.2018 staying pronouncement of the final judgment. The SSP concerned was directed to hand over the entire record to Shri Kanwar Vijay Pratap Singh, who was required to complete the exercise and submit a report within five months. Pursuant thereto, re-investigation was undertaken. The investigating officer examined the complainant and other persons, inspected the place of occurrence and recorded statements. The re-investigation report also referred to allegations regarding pressure upon the complainant and witnesses, registration of other criminal cases against persons connected with the complainant and the circumstances surrounding the earlier trial and acquittal. During the re-investigation, respondents No. 2 to 4, Gurdev Singh, Stalinjit Singh and Gurcharan Singh, were also interrogated, while the other accused were dealt with in accordance with their custody/arrest status.

The investigating officer ultimately presented a supplementary report under Section 173(8) of Cr.P.C. against Stalinjit Singh, Gurdev Singh, Gurcharan Singh, Jarmanjit Singh, Uday Singh, Chamkaur Singh, Sukhraj Singh and Balbir Singh for commission of offences punishable under Sections 302, 201, 120-B, 148 and 149 IPC. However, upon commitment, the case was committed to the Court of Sessions only against the remaining accused, while respondents No.2 to 4, who had already faced trial and had been acquitted, were not summoned. The petitioner thereafter moved an application dated 08.03.2021 before the learned trial Court seeking summoning of respondents No.2 to 4 to face trial along with the other accused on the basis of the fresh investigation and supplementary report. However, the learned Additional Sessions Judge, Tarn Taran, dismissed the said application, vide impugned order 25.03.2021 by observing that respondents No. 2 to 4 had already been acquitted vide judgment dated 04.08.2018 and the said judgment had never been set aside by any superior Court. The learned Court further observed that the order of this Court directing re-investigation did not direct retrial of the persons already acquitted. It was also observed that the private respondents had already faced a complete trial, including examination of witnesses and recording of their statements under Section 313 Cr.P.C., and that, without the earlier judgment of acquittal being set aside, they could not be tried again in view of the specific bar contained in Section 300 Cr.P.C. It also noticed that the supplementary report did not disclose any new evidence against the persons already tried and acquitted and that no new offence had been alleged against them.

9. It is also relevant to mention that against the order dated 06.12.2019 passed by this Court in the earlier proceedings, Stalin Jeet Singh

and another filed SLP (Crl.) Nos.1459 of 2020 before the Hon'ble Supreme Court, wherein on 02.03.2020, notice was issued. However, subsequently, the same was dismissed as withdrawn. The present petition was thereafter filed on 19.04.2021, challenging the order dated 25.03.2021.

10. It is argued by learned counsel for the petitioner/complainant that the impugned order is not sustainable in the eyes of law as the learned trial Court has failed to appreciate the true import of the order dated 06.12.2019 passed by this Court in the earlier proceedings. It is submitted that this Court, after examining the entire matter in detail, had found serious deficiencies in the investigation and prosecution and had directed re-investigation of the whole case by a senior police officer. Pursuant thereto, a fresh investigation was conducted and a supplementary report under Section 173(8) Cr.P.C. was submitted wherein respondents No.2 to 4 were again shown as accused. Learned counsel submits that the learned trial Court, instead of merely considering the application for summoning respondents No.2 to 4 in the light of the fresh investigation, proceeded to adjudicate upon the validity/effect of the supplementary report itself and thereby virtually nullified the re-investigation ordered by this Court. It is argued that the learned trial Court could not sit in judgment over the order passed by this Court and was bound to give effect to the same.

11. It is further argued that the earlier acquittal dated 04.08.2018 cannot be treated as an impediment because the said judgment was pronounced in defiance of the order dated 31.07.2018 whereby this Court had stayed the passing of the final judgment. The order of acquittal was therefore a nullity and could not confer any protection under Section 300 Cr.P.C. Learned counsel for

the petitioner further submits that the factum of the stay order having been passed in open Court in the presence of the State counsel and the police officer demonstrates that the subsequent acquittal could not have been permitted to defeat the proceedings before this Court. Learned counsel further submits that the High Court had suo motu invoked its revisional jurisdiction under Section 397(1) Cr.P.C. and, therefore, it was not necessary for the petitioner to separately challenge the order of acquittal. It is argued that the earlier order of acquittal stood rendered non-est because it was passed during subsistence of the stay order. The impugned order suffers from non-application of mind as the application before the trial Court was for summoning the three respondents on the basis of the supplementary report, whereas the trial Court went beyond the scope of the application and disposed of the supplementary report itself. It is, therefore, prayed that the impugned order dated 25.03.2021 be set aside and respondents No.2 to 4 be summoned to face trial along with the remaining accused. To fortify his arguments, learned counsel for the petitioner has relied upon *Popular Muthiah v. State represented by Inspector of Police, 2006 (3) RCR (Criminal) 527*, *Dinesh Dutt Joshi v. State of Rajasthan, 2001 (4) RCR (Criminal) 429*, *A. V. Papayya Sastry and others v. Government of A. P. and others, 2007 SCC Online SC 317* and *Baldev Kaur v. Surinder Singh, 1984 Law Finder (P&H) 1239*.

12. On the other hand, learned State counsel submits that there is no illegality in the impugned order. It is submitted that respondents No.2 to 4 had already faced trial in the same FIR and had been acquitted by the learned Additional Sessions Judge, Tarn Taran, vide judgment dated 04.08.2018. The said judgment has never been set aside by any competent superior Court and

neither the State nor the complainant preferred any appeal or revision against the same. Learned State counsel submits that the order dated 06.12.2019 passed by this Court directed re-investigation of the case but did not specifically direct retrial of the accused who had already been acquitted. It is further submitted that the subsequent order of this Court recorded that the report under Section 173(8) Cr.P.C. had been presented before the competent Court and that the trial Court was to proceed with the case and there was no direction to reopen the concluded trial against respondents No.2 to 4. Hence, it is urged that the petition is liable to be dismissed.

13. Learned counsel appearing on behalf of respondents No.2 to 4 has argued that the present petition deserves to be dismissed as these respondents have already been tried and acquitted by the learned trial Court. It is submitted that the judgment dated 04.08.2018 has neither been challenged nor set aside and consequently remains final and binding. The trial Court, therefore, rightly refused to summon them in view of the statutory bar contained in Section 300 Cr.P.C. It is further submitted that the prosecution had originally filed the report under Section 173(2) Cr.P.C. against Gurdev Singh and Stalinjit Singh, while Gurcharan Singh was subsequently summoned under Section 319 Cr.P.C.. All three faced the complete trial, including examination of witnesses and recording of their statements under Section 313 Cr.P.C., and were thereafter acquitted. Thus, there is no question of their being subjected to a second trial without the earlier judgment of acquittal having first been set aside. Learned counsel further submits that the subsequent re-investigation did not result in any new evidence or a new offence against the already acquitted respondents. The learned trial Court specifically noticed that no new evidence

had surfaced against them in the supplementary report. It is, therefore, contended that merely mentioning their names in column No.4 of the supplementary report cannot override the protection available to them under Section 300 Cr.P.C. Hence, it is urged that the petition deserves dismissal.

14. This Court has heard the rival submissions at considerable length, besides going through the material placed on record.

15. At the outset, it is worth mentioning that although the present petition has been filed invoking the inherent jurisdiction of this Court under Section 482 Cr.P.C., the relief sought by the petitioner, in substance, is premised upon treating the judgment dated 04.08.2018, whereby respondents No.2 to 4 were acquitted, as having ceased to operate. The petitioner seeks their summoning to face trial once again for the very occurrence and the very offences in respect of which they have already faced trial and have been acquitted. Such a course necessarily postulates that the earlier judgment of acquittal is first displaced in accordance with law. The statutory scheme does not contemplate that a subsisting judgment of acquittal can be rendered ineffective indirectly by seeking summoning of the acquitted persons on the basis of a subsequent police report. The Code provides a specific appellate mechanism against an order of acquittal. The State and the complainant/petitioner did not pursue the judgment dated 04.08.2018 to its appellate conclusion and the said judgment has admittedly not been set aside by any competent Court. Consequently, the application filed before the learned trial Court on the strength of the supplementary report could not be permitted to achieve, indirectly, what could not be achieved without first questioning the subsisting judgment of acquittal in appropriate proceedings. The inherent

jurisdiction under Section 482 Cr.P.C. cannot be employed as a substitute for a remedy specifically provided by the Code, particularly where exercise of such jurisdiction would result in subjecting a person to a second prosecution notwithstanding a subsisting acquittal.

16. Learned counsel for the petitioner has strenuously contended that the judgment dated 04.08.2018 is a nullity since it was pronounced despite the order dated 31.07.2018 passed by this Court, whereby pronouncement of the final judgment by the learned trial Court had been stayed. The record indeed shows that such an order had been passed by this Court and that, notwithstanding the same, the learned trial Court proceeded to pronounce the judgment of acquittal on 04.08.2018. The subsequent proceedings before this Court also reflect the concern expressed regarding the circumstances in which the order dated 31.07.2018 was not acted upon. The question, however, is whether such circumstance, by itself and without the judgment of acquittal having been set aside in appropriate proceedings, enables this Court, while deciding the present petition, to treat the said judgment as non-existent for the purpose of Section 300 Cr.P.C.? In the considered view of this Court, the answer has to be in the negative. It is a settled principle that an order cannot simply be ignored on the unilateral assertion that it is void or otherwise legally defective. Its invalidity has to be established before a competent forum in appropriate proceedings. Reference in this regard can be made to ***Tayabbhai M. Bagasarwalla v. Hind Rubber Industries (P) Ltd., (1997) 3 SCC 443***, wherein Hon'ble Supreme Court held that an order passed by a court, even one later found to have lacked jurisdiction to entertain the case, does not thereby become non-est or a nullity for all purposes. Rather, it remains binding and must be

obeyed and any disobedience committed while it was in force remains punishable, unless and until its invalidity is established and it is set aside in proceedings taken by a party entitled to challenge it. The said conclusion was based on the settled principle extracted from *Shiv Chander Kapoor v. Amar Bose, (1990) 1 SCC 234* and *State of Punjab v. Gurdev Singh, (1991) 4 SCC 1*, wherein it was held that 'void' is not meaningless in an absolute sense and that an order even a hypothetically void one remains presumptively valid and operative until the invalidity is judicially established.

17. The submission that the judgment dated 04.08.2018 is *void ab initio* and may therefore simply be ignored would, in effect, require this Court, in the present proceedings, to undertake an adjudication upon the validity of the said judgment without the judgment itself being under challenge before this Court in appropriate appellate or revisional proceedings. Such a course cannot be adopted merely as an incident of deciding whether respondents No.2 to 4 should be summoned afresh. It is one thing to hold that the pronouncement of the judgment was contrary to a subsisting direction of this Court and that such conduct may warrant appropriate legal consequences but at the same time, it is quite another to hold that the judgment thereby became a complete nullity for all purposes without any formal adjudication to that effect. The latter consequence cannot follow merely by implication. The position becomes still clearer when examined in the context of Section 300 Cr.P.C. The protection under the provision presupposes a prior prosecution before a competent Court and a conviction or acquittal which continues to operate. The Hon'ble Supreme Court in *T.P. Gopalakrishnan v. State of Kerala, (2022) 14 SCC 323*, while explaining the conditions necessary for attracting the protection against double

jeopardy under Section 300 Cr.P.C. and Article 20(2) of the Constitution of India, held that three conditions must be satisfied: first, there must have been a previous proceeding before a Court of competent jurisdiction in which the person was prosecuted and such prosecution must have been valid and not null, void or abortive; second, the conviction or acquittal in that previous proceeding must be in force at the time of the second proceeding, in relation to the same offence and the same set of facts; and third, the subsequent proceeding must be a fresh proceeding seeking to prosecute and punish the person a second time for the same offence and the same facts, as opposed to a mere continuation of the earlier proceeding such as an appeal. It was further clarified that for an offence to be treated as the 'same offence' as the earlier one, it must be shown that the offences are not distinct and that their ingredients are identical; where two offences are made up of different ingredients, the bar has no application even if the offences have some overlapping features. The said principle was reiterated and applied by the Hon'ble Supreme Court in ***P. Manikandan v. Central Bureau of Investigation and others, 2024 INSC 1007***, where a clear distinction has been drawn between a 'retrial' and a 're-investigation', the former being a continuation of the same prosecution and the latter requiring the investigating agency to start collecting and examining evidence afresh. It was held that while an appellate court has the power under Section 386(b) Cr.P.C. to direct a retrial in exceptional cases, this power does not extend to directing a fresh re-investigation once an acquittal has been recorded and doing so, particularly through a different investigating agency starting from zero, amounts to a fresh proceeding seeking to prosecute the person a second time for

the same offence and the same facts, and therefore violates the protection against double jeopardy under Article 20(2) of the Constitution.

18. In the present case, there is no material to suggest that the learned trial Court lacked jurisdiction to conduct the trial against respondents No.2 to 4. The complaint is essentially regarding the pronouncement of the final judgment despite the order dated 31.07.2018. That circumstance, serious as it may be, is distinct from a case where the entire previous prosecution was inherently without jurisdiction or was otherwise null and abortive. The judgment dated 04.08.2018, therefore, cannot be treated as having disappeared from the legal record merely because its pronouncement is alleged to have been in breach of the order dated 31.07.2018.

19. Now coming to the order dated 06.12.2019, whereby this Court directed re-investigation of the case. The said order must be read in the context in which it was passed and for the purposes for which it was issued. The order was undoubtedly passed after this Court had noticed serious concerns regarding the investigation, the conduct of the prosecution and the circumstances surrounding the trial. The record demonstrates that the Court did not lightly exercise its jurisdiction and directed re-investigation of the case by Shri Kanwar Vijay Pratap Singh, Inspector General of Police, Punjab. Pursuant thereto, the investigating agency undertook further investigative exercise and a report under Section 173(8) Cr.P.C. came to be presented before the competent Court. However, a direction for re-investigation cannot, merely by implication, be treated as an order setting aside an already recorded judgment of acquittal. The order dated 06.12.2019 does not expressly set aside the judgment dated 04.08.2018, nor does it contain a specific direction that respondents No.2 to 4,

who had already faced trial and stood acquitted, should be subjected to a fresh trial. The distinction assumes greater significance in view of the subsequent pronouncement of the Supreme Court in ***P. Manikandan's case (supra)***. In that case, the Hon'ble Supreme Court examined the legality of directing de novo investigation after an acquittal and emphasised the distinction between retrial and re-investigation. It was held that the power to order retrial in the circumstances contemplated by law is distinct from directing a fresh investigation after an acquittal and that a direction for re-investigation on the same facts and for the same offences, resulting in a second prosecution, cannot be used to defeat the protection against double jeopardy under Article 20(2) of the Constitution and Section 300 Cr.P.C. The ratio of the said judgment is particularly relevant here because the present case involves an acquittal followed by an investigation which has again sought to implicate the same persons in respect of the same occurrence. Whatever may have been the deficiencies in the earlier investigation, and however serious the circumstances which persuaded this Court to direct re-investigation, such re-investigation cannot, by itself, have the legal effect of wiping out a subsisting acquittal. This is also consistent with the principle recognised in ***Vinay Tyagi v. Irshad Ali @ Deepak and others, (2013) 5 SCC 762***, concerning the distinction between further investigation and the judicial adjudication which has already taken place. A subsequent investigative report may add to the material available before the Court, but it does not, merely by being submitted, automatically supersede or nullify an adjudication already rendered by a competent criminal Court.

20. This case has one another angle also. The learned trial Court has specifically noticed that the supplementary report did not disclose any new evidence or any new offence qua respondents No.2 to 4 which was distinct from the material and offences already forming the subject matter of their earlier trial. The said finding has not been displaced before this Court by pointing out any specific piece of fresh material in the supplementary report which, by itself, could constitute a legally sustainable basis for subjecting the respondents to a second trial. It is true that, during the re-investigation, respondents No.2 to 4 were again interrogated and the investigating agency ultimately included their names in the report submitted under Section 173(8) Cr.P.C. However, the mere fact that the investigating agency, upon re-examination of the material, again formed an opinion against them cannot, by itself, undo the judicial determination already rendered in their favour. The subsequent report, therefore, cannot be treated as furnishing a fresh cause to put respondents No.2 to 4 on trial for the same occurrence merely because their names have again been mentioned in the supplementary report. A police report, however differently worded or differently assessed, cannot by itself convert a concluded prosecution into a fresh prosecution against persons who already stand acquitted.

21. Still further, Section 300 Cr.P.C. embodies the statutory protection against a second prosecution and gives effect, in the criminal process, to the fundamental principle against double jeopardy. The provision seeks to attach finality to a prosecution once a person has been tried and acquitted or convicted by a competent Court, subject to the exceptions recognised by law. The Hon'ble Supreme Court in *State of Bombay v. S.L. Apte*, AIR 1961 SC 578, while

examining the scope of Article 20(2) of the Constitution, held that the protection against double jeopardy is attracted only where the two offences are identical in their ingredients, content and scope, and clarified that what is to be compared for this purpose is not the allegations set out in the two proceedings but the ingredients of the offences themselves; even where the offences share some common elements or arise from substantially overlapping facts, the bar has no application so long as the offences remain distinct, being made up of different ingredients. Applying the aforesaid principles to the facts of the present case, all the relevant requirements stand satisfied. Respondents No.2 to 4 were tried by a competent Court in the very FIR in question. The trial was not a mere preliminary proceeding; prosecution evidence was recorded and their statements under Section 313 Cr.P.C. were also recorded. The proceedings culminated in their acquittal vide judgment dated 04.08.2018. The said judgment has neither been set aside nor reversed and continues to subsist. The present attempt to summon them on the basis of the supplementary report would necessarily expose them to a fresh prosecution arising from the same occurrence and the same offences. Thus, unless the earlier judgment of acquittal is first displaced by a competent forum in accordance with law, the statutory protection under Section 300 Cr.P.C. stands attracted. It is, therefore, not open to the learned trial Court, while considering an application for summoning, or to this Court in exercise of jurisdiction under Section 482 Cr.P.C., to simply treat the subsisting judgment of acquittal as inoperative. The fact that this Court had earlier directed re-investigation does not alter the legal position, particularly when the said order did not expressly set aside the acquittal or direct a retrial of respondents No.2 to 4.

22. The further grievance of the petitioner that the learned trial Court travelled beyond the scope of the application by examining the effect of the supplementary report is also not made out. The application filed by the petitioner was specifically for summoning respondents No.2 to 4 to face trial along with the other accused on the basis of the report submitted under Section 173(8) Cr.P.C. The learned trial Court was, therefore, necessarily required to determine whether there existed any legal impediment to summoning persons who had already faced trial and had been acquitted. Examination of Section 300 Cr.P.C. in that context was not an adjudication upon the correctness or otherwise of the re-investigation report in its entirety. Rather, it was a threshold examination of the legal competence of the Court to subject the already acquitted persons to another trial. The learned trial Court also took note of the fact that the judgment of acquittal dated 04.08.2018 had not been set aside and that the supplementary report did not disclose any new offence or fresh evidence against respondents No.2 to 4 sufficient to overcome the statutory bar. The approach adopted by the learned trial Court, therefore, cannot be characterised as one of non-application of mind.

23. So far as the judgments relied upon by learned counsel for the petitioner are considered, in the considered view of this Court, they do not advance his case and are distinguishable on facts as well as in principle. ***Dinesh Dutt Joshi's case (supra)*** deals with the scope of Section 482 Cr.P.C. in the context of a discharge order set aside by the High Court without hearing the accused. It lays down the general principle that Section 482 confers no new power but only recognizes the High Court's inherent power to cover lacunae in procedural law, whereas ***A.V. Papayya Sastry's case (supra)*** is equally

inapposite as it was rendered in the context of a civil revisional authority's suo motu power under the Urban Land (Ceiling and Regulation) Act, and holds that the doctrine of merger and finality does not apply where a judgment or order is shown to have been obtained by fraud. No fraud, as distinct from a procedural irregularity in the pronouncement of the judgment, has been alleged or established qua the acquittal dated 04.08.2018 and even the principle in **A.V. Papayya Sastry's case (supra)** does not permit a judgment to be treated as a nullity and disregarded. In **Baldev Kaur's case (supra)**, which is a Single Bench decision of this Court, it was held that proceedings taken by a trial court after a stay of "further proceedings" are without jurisdiction. That case dealt with a situation where the trial court kept going ahead with a divorce case even though the High Court had already stayed the proceedings before it. The judgment does not say anything about what happens to an order once it has already been passed and exists on record. It certainly does not say that a different court, in a separate case, can simply ignore such an order without it first being set aside. Lastly, **Popular Muthiah's case (supra)** concerns the power under Section 319 Cr.P.C. to summon an additional accused who was never previously tried. This authority has no application to a person who has already faced trial and stands acquitted, since Section 319 and Section 300 Cr.P.C. occupy entirely distinct fields and the general observations therein regarding Section 482 being available to secure the ends of justice cannot be read as overriding the specific statutory bar enacted in Section 300 Cr.P.C.

24. In view of the discussion as made above, this Court is of the considered view that the learned trial Court has not committed any illegality, perversity or jurisdictional error in declining to summon respondents No.2 to 4

on the basis of the supplementary report. The judgment dated 04.08.2018 whereby respondents No.2 to 4 were acquitted continues to hold the field and has not been set aside by any competent forum. In such circumstances, the statutory protection contained in Section 300 Cr.P.C. squarely comes into operation and the subsequent re-investigation and supplementary report cannot, by themselves, provide a lawful basis for subjecting the said respondents to a second trial for the same occurrence and offences. The argument that the judgment dated 04.08.2018 was pronounced in breach of the order dated 31.07.2018 may give rise to such remedies as are otherwise available in law but that circumstance cannot, in the present collateral proceedings, be treated as having automatically obliterated the judgment of acquittal. Whether the said judgment is liable to be interfered with on that or any other legally permissible ground is a matter for determination in appropriate proceedings before the competent forum. Accordingly, finding no merit in the petition, the same is hereby dismissed.

25. It is, however, clarified that nothing contained in the present order shall preclude the petitioner from pursuing, in accordance with law, such remedy as may be available to him against the judgment dated 04.08.2018, including on the ground relating to the order dated 31.07.2018, before the appropriate forum, subject to all questions of maintainability, limitation, delay, condonation and jurisdiction being decided in accordance with law.

31.08.2026

Naseem R. Ansari

(MANISHA BATRA)
JUDGE

Whether speaking/reasoned

Yes

Whether reportable

Yes