

Bikash Ranjan Rout Vs. State

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Court : Delhi

Decided On : Aug-20-2014

Judge : V.P.Vaish

Appellant : Bikash Ranjan Rout

Respondent : State

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on:

01. t August, 2014 Date of Decision:

20. h August, 2014 % + CRL. M.C. No.3386/2013 BIKASH RANJAN ROUT
Through:Petitioner Mr. Gautam Kumar & Mr. Niranjan Behera, Advocates.
Versus STATE Through:Respondent Mr. Praveen Bhati, APP for the State
CORAM: HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1 By way of present petition under Section 482 of Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.), the petitioner has assailed the order dated 05.02.2013 passed by learned Additional Chief Metropolitan Magistrate (West), Delhi and letter dated 22.04.2013 under Section 160 Cr.P.C sent by District Investigation Unit, West District, Police Post MIG Flats, J-Block, Rajouri Garden, New Delhi.

2. Shorn off unnecessary details the facts of the case are that the complainant, Akshay Jain lodged a complaint dated 28.09.2007 on the basis of which FIR No.426/2007 under Sections 420/468/471 IPC was registered at P.S. Janakpuri, Delhi. On completion of investigation, charge-sheet for the offence under Sections 420/468/471 IPC was filed.

3. After hearing arguments on charge and considering the charge sheet, the petitioner was discharged by learned Additional Chief Metropolitan Magistrate (West) Delhi vide impugned order dated 05.02.2013 and Additional Commissioner of Police (West) Delhi was directed to make appreciation of quality of investigation done in this case and to analyze the process of efficacy of sending any charge-sheet before the prosecution branch for the purpose of scrutiny as in fact, nothing is done by the investigating officer to comply with the objections raised so as to present a viable case of any offence against any accused and even higher officers approve the filing of charge-sheet without sufficient materials. It was also observed that the case required further investigation to reach a logical conclusion. Thereafter, notice under Section 160 of Cr.P.C. dated 22.4.2013 was issued by District Investigation Unit, West District, New Delhi.

4. Vide impugned order dated 05.02.2013 and notice under Section 160 Cr.P.C., the petitioner has preferred the present petition.

5. Learned counsel for the petitioner contended that the Trial Court was not empowered to order for further investigation in terms of Section 173 of Cr.P.C. In support of his submission, he has relied upon judgment in Reeta Nag vs. State of West Bengal and Ors., (2009) 9 SCC129 6. Per contra, learned APP for the State argued that sub-section (8) of Section 173 of Cr.P.C. permits the investigating agency to further investigate the matter and file the supplementary charge-sheet.

7. I have bestowed my thoughtful consideration to the submissions made by learned counsel for the petitioner as well as learned APP for the State and perused the material placed on record.

8. The short question which comes up for consideration is whether the Magistrate has jurisdiction under Section 173(8) Cr.P.C. to direct further investigation.

9. Chapter XII of Cr.P.C. deals with the information to the police and their powers to investigate. Section 173 of Cr.P.C. envisages the report of police officer on completion of police investigation, which reads as under: 173. Report of investigation police officer on completion of (1) Every investigation under this Chapter shall be completed without unnecessary delay. [(1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.]. (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 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 section 376, 376A, 376B, 376C [section 376D or section 376E of the Indian Penal Code (45 of 1860)].]. (ii) The officer shall also 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. (3) Where a superior officer of police has been appointed under section 158, the report, shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation. (4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit. (5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report- (a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation; (b) the statements recorded under section 161 of all the persons

whom the prosecution proposes to examine as its witnesses. (6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceeding or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request. (7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5). (8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under subsection (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).

10. On a bare perusal of sub-section (2) and (8) of Section 173 Cr.P.C., it is evident that even after submission of police report under sub-section (2) on completion of the investigation, the investigating agency has a right to further investigation under sub-section (8) of Section 173 Cr.P.C. but not fresh investigation or re-investigation. The meaning of further is additional, more or supplemental. Further investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether.

11. Sub-section (8) of Section 173 Cr.P.C. clearly provides that a completion of further investigation, the investigating agency has to forward a further report to the Magistrate and not a fresh report regarding further evidence obtained during such investigation.

12. It is beyond any cavil that further investigation and re- investigation stand on different footing. The direction of a re- investigation is prohibited, however, further investigation is permissible. The law does not mandate taking of prior permission

from the Magistrate for further further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police.

13. In *Minu Kumari vs. State of Bihar*, (2006) 4 SCC359 it was observed that the powers are vested in a Magistrate upon filing of a report in terms of Section 173(2)(i) of Cr.P.C. and the kind of order that the Court can pass. It was further held that when a report is filed before a Magistrate, he may either (i) accept the report and take cognizance of the offences and issue process; or (ii) may disagree with the report and drop the proceedings; or (iii) may direct further investigation under Section 156(3) Cr.P.C. and require the police to make a further report.

14. In view of the dictum of the Apex Court in *Minu Kumaris case* (*supra*), it is clear that the Court of Magistrate has a power to direct further investigation when a report is filed under Section 173(2) of Cr.P.C. and may also exercise such powers with the aid of Section 156(3) of Cr.P.C.

15. In *Hemant Dhasmana vs. CBI*, (2001) 7 SCC536 it was held that although Section 173(8) of Cr.P.C. does not, in specific terms, mention about the power of the Court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the Court. When any such order is passed by the Court, which has the jurisdiction to do so, then such order should not be interfered with in exercise of a higher Courts revisional jurisdiction. Such orders would normally be an advantage to achieve the ends of justice. It was clarified that the Magistrate, in exercise of powers under Section 173(8) of Cr.P.C. can direct CBI to further investigate the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the new report to be submitted by the investigating officer, would be governed by sub-section (2) to (6) of Section 173 of Cr.P.C. There is no occasion for the Court to interpret Section 173(8) of Cr.P.C. restrictively. After filing of the final report, the learned Magistrate can also take cognizance on the basis of material placed on record by the investigating agency and it is impermissible for him to direct further investigation. The conduct of proper and fair investigation is the hallmark of any criminal investigation. Reference with advantage may be made to judgments in *UPSC vs. S Papaiah*, (1997) 7 SCC614 *State of Orissa vs.*

Mahima, (2007) 15 SCC580 Kishan Lal vs. Dharminder Bafna & Ors., 2009 (3) JCC2273 State of Maharashtra vs. Sharatchandra Vinayak Dongre, (1995) 1 SCC42 16. A similar question cropped up before the Apex Court in Bhagwant Singh vs. Commissioner of Police, (1985) 2 SCC537 The three Judge Bench of Honble Supreme Court of India observed 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. 17. In *Reeta Nags* case (supra) relied upon by learned counsel for petitioner, it was held that a Magistrate cannot suo motto direct further investigation under Section 173(8) Cr.P.C. or direct re-investigation into case on account of the bar contained in Section 167(2) of Cr.P.C. and that a Magistrate can direct filing of charge-sheet where the police submits a report that no case had been made out for sending an accused for trial.

18. In another case *Vinay Tyagi vs. Irshad Ali @ Deepak and Ors.*, (2013) 5 SCC762 Honble Supreme Court of India after considering the judgment in *Reeta Nags case* (supra) and *Randhir Singh Rana vs. State (Delhi Admn.)*, (1997) 1 SCC361 observed that the ambit and scope of the power of a Magistrate in terms of Section 173 of Cr.P.C. was squarely debated before the Supreme Court in *Bhagwant Singhs case* (supra). The Honble Supreme Court after analyzing the provisions of the Cr.P.C. and the aforesaid judgments observed as under: 40. Having analysed the provisions of the Code and the various judgments as aforeindicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:

40. 1. The Magistrate has no power to direct reinvestigation or fresh investigation (de novo) in the case initiated on the basis of a police report. 40.2. A Magistrate has the power to direct further investigation after filing of a police report in terms of Section 173(6) of the Code. 40.3. The view expressed in Sub-para 40.2 above is in conformity with the principle of law stated in *Bhagwant Singh case* by a three-Judge Bench and thus in conformity with the doctrine of precedent. 40.4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8). 40.5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own. 40.6. It has been a procedure of propriety that the police has to seek permission of the court to continue further investigation and file supplementary charge-sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case. 19. What emerges from the aforesaid

decisions of the Honble Supreme Court of India is that the Magistrate can direct for further investigation in the interest of justice. The provisions of Section 173 Cr.P.C. makes it clear that re-investigation is prohibited, however, further investigation is permissible.

20. In the instant case, the complainant lodged a complaint that two cheques bearing Nos.006775 and 002022 pertaining to his account Nos.008701508622 and 008701509672 respectively maintained at ICICI Bank, Janak Puri Branch, New Delhi, bear the forged signatures. The Trial Court observed that the signatures were not made on the cheques in the name of the accused and false signatures in the name of the complainant were put on the aforesaid two cheques. The specimen handwriting/ signature of accused were not obtained for their comparison with signature on the said two cheques. The Trial Court also observed that during scrutiny, the question was raised by the prosecution department that why specimen signatures of accused were not taken after obtaining permission of the Court. The objection was also raised to say that the charge-sheet does not explain that how the cheques were obtained by the accused. Even the initial complaint made by the complainant has not been placed on record despite such objections. The initial Investigating Officer of this case did not take any step to connect the accused with alleged offence of forgery. In these circumstances, the Trial Court directed that the case requires further investigation to reach at a logical conclusion.

21. For the aforementioned reasons, the impugned order cannot be faulted. There is no illegality or infirmity in the impugned order dated 05.02.2013 passed by learned Additional Chief Metropolitan Magistrate (West), Delhi. The petition, being without merit, is dismissed. CrI.M.A. No.12462/2013 The application is dismissed as infructuous. (VED PRAKASH VAISH) JUDGE AUGUST20h , 2014 hs

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