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Court : Chennai

Decided On : Dec-15-2015

Judge : A. Selvam

Appeal No. : CrI.O.P.Nos. 11101 & 15873 of 2015

Appellant : Hemendhra Reddy and Another

Respondent : The State, Rep. by Additional Superintendent of Police, SPE/CBI/ACB, Chennai

Judgement :

(Prayer: Criminal Original Petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973, to call for the records in C.C.No.13 of 2015, on the file of the XIII Additional Special Judge for CBI Cases, Chennai and to quash the same.)

Common Order:

1. These criminal original petitions have been filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the records relating to Calendar Case No.13 of 2015 and quash the final report.

2. The case of the prosecution is that the prime accused, by name, D.Dwarakanadha Reddy, has served as appraiser in Customs Department in the year 2004. After receipt of reliable information, the Superintendent of Police, SPE/CBI/ACB, Chennai, has conducted investigation with regard to possession of properties by the prime accused and his wife, disproportionate to his regular income. The prime accused has been given notice and thereby directed to give proper explanation. Since he has not given any satisfactory explanation, a case has been registered against them under Sections 13(2) r/w. 13(1)(e) of the Prevention of Corruption Act, 1988 and also under Section 109 of the Indian Penal Code r/w.13(1)(e) of the Prevention of Corruption Act, 1988. After conducting investigation, the respondent has filed a closure report under Section 173(2) of the Code of Criminal Procedure, 1973, on the file of the Principal Special Court for CBI Cases, Chennai and the same has been accepted and consequently, the First Information Report has been closed. The respondent, after getting subsequent information and also after obtaining necessary permission from the Principal Special Court for CBI Cases, Chennai, has again investigated the matter and filed a final report against the prime accused, his wife and his brother-in-law and all of them have been arrayed as accused 1 to 3. The final report filed by the respondent has been taken on file in Calendar Case No.13 of 2015, on the file of the 13th Additional Special Judge for CBI cases, Chennai.

3. During the pendency of the same, the second accused, as petitioner, has filed Crl.O.P.No.15873 of 2015, the third accused, as petitioner, has filed Crl.O.P.No.11101 of 2015, on the file of this Court, for getting the relief sought therein.

4. In both the petitions, it has been specifically averred that the petitioners are having independent income so as to purchase properties in their names and they have no connection whatever in the income of the first accused. Further, the respondent has initially investigated the matter against the accused 1 and 2 and since, no reliable documents or sufficient evidence have been obtained, a closure report has been filed on the file of the Principal Special Court for CBI Cases, Chennai and the same has also been accepted and further, the First Information Report has also been closed. Under the said circumstances, these petitions have

been filed for getting the relief sought therein.

5. On the side of the respondent, in both the petitions, a detailed counter has been filed. Apart from denial of facts mentioned in both the petitions, it is averred in the counter that since the respondent has obtained sufficient documents so as to proceed further against all the accused, an application has been filed on the file of the Principal Special Court for CBI cases, Chennai, for re-opening the matter and accordingly, necessary permission has been granted to conduct further investigation and on the basis of permission granted by the Court, a detailed investigation has been conducted by way of collecting so many relevant documents and ultimately, filed a final report and the same has been taken on file in Calendar Case No.13 of 2015 and since various materials are available so as to proceed further against the petitioners, these petitions are not factually and legally maintainable and therefore, the same are liable to be dismissed.

6. The learned counsel appearing for the petitioners has elaborately argued about the factual circumstances under which these petitions have been filed. But ultimately, he raised a legal point to the effect that the respondent has registered a case initially against the accused 1 and 2 and conducted investigation and after coming to know that no sufficient materials are available to proceed against them, a closure report has been filed before the Principal Special Court for CBI Cases, Chennai and the same has been accepted and consequently, First Information Report has also been closed and thereafter, a petition has been filed for permitting to conduct further investigation, but the Principal Special Court for CBI cases, Chennai, without knowing that it has no power to grant such permission, has erroneously allowed the petition and therefore, the subsequent investigation, alleged to have been done by the respondent, is totally illegal and on that score also the final report filed, in Calendar Case No.13 of 2015, is liable to be quashed.

7. In order to resile the contentions put forth on the side of the petitioners, the learned Special Public Prosecutor has accited various paragraphs in final reports as well as statements of some of the witnesses and with regard to legal point raised on the side of the petitioners, he contended to the effect that similar legal point has been raised in Crl.O.P.No.6371 of 2014 by the first accused and this

Court, by way of relying upon the decisions reported in (i) 1999 SCC (Cri) 397 (M.Krishnan vs. State of Karnataka); (ii) AIR 1979 SC 1791 (Lal Narang Vs. State (Delhi Administration)); (iii) 2009 (3) SCC (cri.) 1051 (Reeta Nag vs. State of West Bengal and others), has categorically held that under Section 173(8) of the Code of Criminal Procedure, 1973, the concerned Magistrate is having unfettered right of granting permission to conduct further investigation and since the legal point raised has already been decided by this Court, again it cannot be re-opened and therefore, the present petitions are liable to be dismissed.

8. Since on the side of the petitioners the said legal point has been predominantly contended, the Court has to analyze the same with utmost care and circumspection.

9. The legal point involved in the present criminal original petitions is as to whether the concerned Magistrate is having power of granting fresh investigation, especially after getting closure report and consequently accepting the same?

10. The Hon'ble Supreme Court, with regard to power of a Magistrate under Section 173(8) of the Code of Criminal Procedure, 1973, has made a threadbare discussion in the decision reported in AIR 2015 SC 3566 (Chandra Babu alias Moses v. State through the Inspector of Police and others). After making elaborate discussion, the Hon'ble Supreme Court has culled out the powers of Magistrate under the said Section like thus:

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".

11. From a cursory reading of the observations made by the Hon'ble Supreme Court, it is discernible that after getting a final report under Section 173(2) of the said Code, the concerned Magistrate is having power, either to take cognizance or to direct the investigating agency to conduct further investigation as per Section 173(8) of the said Code.

12. Even a mere reading of Section 173 of the Code and its Sub-Clauses, would go to show that after getting a final report, the concerned Magistrate is having unfettered right of granting further investigation as envisaged in Sub-Clause (8) of Section 173 of the said Code.

13. But, the legal position involves in the present petitions is otherwise. The legal point is as to whether after closure of final report, as well as First Information Report, whether the concerned Magistrate is having power to grant permission either to conduct further investigation/re-investigation/de-novo investigation.

14. At this juncture, it would be condign to look into the real dictionary meaning of further investigation ?. The dictionary meaning of further(when used as an adjective) is additional; more; supplemental'. FurtherInvestigation 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. Therefore, it is pellucid that for granting permission to conduct further investigationan investigation must be pending or to put it in short, some proceeding must be pending before the concerned Court. It is also a settled principle of law that after filing a final report under Sub-Clause (2) of Section 173 of the said Code, while matter is pending, the investigating officer can collect some more materials so as to strengthen the accusation made against the concerned accused.

15. As adverted to earlier, in the instant case, the main contention of the petitioners is that already investigation has been done against the accused 1 and 2 and a closure report has been filed before the Principal Special Judge for CBI cases, Chennai and the same has been accepted and consequently, First Information Report has been closed. Under the said circumstances, to grant permission either to conduct further investigation or reinvestigation does not arise.

16. The learned counsel appearing for the petitioners has befittingly drawn the attention of this Court to the decision reported in (2013) AIR SCW 220 " Vinay Tyagi vs. Irshad Ali alias Deepak and others, wherein, the Hon'ble Supreme Court has held that no investigating agency is empowered to conduct 'fresh', 'de-novo' or 'reinvestigation', in relation to offence for which it has already filed a report in terms of Section 173(2) of the Code of Criminal Procedure, 1973. Once a report under Section 173(2) has been filed, it can only be cancelled, proceeded further or case closed by a Court of competent jurisdiction. Neither the police nor a specialized investigating agency has any right to cancel the report.

17. Further, the Hon'ble Supreme Court has observed that it will be a travesty of justice, if the Court cannot be permitted to direct further investigation to clear its doubt and to order the investigating agency to further substantiate its charge-sheet. The satisfaction of the Magistrate is a condition precedent to commencement of further proceedings before the Court of competent jurisdiction.

18. As per the observation made by the Hon'ble Supreme Court, it is made clear that only for the purpose of clearing doubt of Court or to substantiate the final report already filed, further investigation can be directed.

19. It is an admitted fact that already the respondent has investigated the case registered against the accused 1 and 2 and ultimately filed the closure report on 29.1.2009. The Principal Special Court for CBI cases, Chennai, has passed the following orders:

Orders pronounced. In the result, final report is accepted and the First Information Report is closed and permitted to retain documents collected during the investigation to be used in the regular departmental action against A1 ?.

20. After lapse of four years from passing the order mentioned supra, in the year 2013, the respondent, as petitioner, has filed CrI.M.P.No.3833 of 2013, on the file of the Principal Special Court for CBI Cases, Chennai, wherein, it is prayed to permit the petitioner therein to re-open and further investigate the above case.

21. On the basis of the prayer sought therein, the Principal Special Court for CBI cases, Chennai, has permitted the petitioner to conduct investigation.

22. As per dictum given by the Hon'ble Supreme Court in (2013) AIR SCW 220 “ Vinay Tyagi vs. Irshad Ali alias Deepak and others, the investigating agency has no power either to conduct a 'fresh' or 'de novo' or 're-investigation', after filing closure report. Further, it has already been pointed out that for granting permission to conduct further investigation, something must be pending before the concerned Magistrate. But, as pointed out earlier, in the instant case, no matter is pending, at the time of granting permission to conduct re-investigation or further investigation, on the file of the Principal Special Judge for CBI cases, Chennai. Therefore, it is quite clear that the Principal Special Judge for CBI cases, Chennai, has no power to grant such kind of permission and the order passed by the Principal Special Judge for CBI cases, Chennai, is not only illegal, but also non-est in law.

23. The learned Special Public Prosecutor has advanced his entire argument only on the basis of the order passed in Criminal Original Petition No.6371 of 2014. In fact, at the time of passing the order in CrI.O.P.No.6371 of 2014, the decision mentioned supra has not been brought to the knowledge of this Court. Under the said circumstances, this Court has erroneously ratified the permission granted by the Principal Special Judge for CBI cases, Chennai. Therefore, on the basis of the order passed, in CrI.O.P.No.6371 of 2014, by this Court, we cannot come to a conclusion that the order passed by the Principal Special Judge for CBI cases, Chennai, is valid in law. Further, it has already been pointed out that the said order has been passed even without power. Since the said order is totally alien to law, the subsequent proceedings are also bad in law.

24. The present petitions have been filed praying to quash the final report filed in Calendar Case No.13 of 2015. Since the permission granted to the respondent for conducting re-investigation or further investigation by the Principal Special Judge

for CBI cases, Chennai, is totally illegal and since the subsequent proceedings are also entirely bad in law, it is needless to say that the final report filed thereon is also both factually and legally not sustainable. Under the said circumstances, the legal point raised on the side of the petitioner is really having subsisting force. On that score alone, these petitions are liable to be allowed.

25. Since the legal point raised on the side of the petitioners is factually and legally sustainable and on that ground alone these petitions can be allowed, the Court need not decide the divergent facts put forth on either side.

26. In fine, these criminal original petitions are allowed. The final report filed in Calendar Case No.13 of 2015, pending on the file of the XIII Additional Special Judge for CBI cases, Chennai, is quashed with regard to the present petitioners (accused 2 and 3).

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