

Smt Hemavathi I B Vs. State Of Karnataka

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Court : Karnataka

Decided On : Apr-18-2024

Judge : H.P.Sandesh

Appeal No. : WP 29329/2023

Appellant : Smt Hemavathi I B

Respondent : State Of Karnataka

Judgement :

- 1 - NC:

2024. KHC:15671 WP No.29329 of 2023 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE18H DAY OF APRIL, 2024 BEFORE THE HON'BLE MR JUSTICE H.P.SANDESH WRIT PETITION No.29329 OF2023(GM-RES) BETWEEN:

1. SMT. HEMAVATHI I.B., W/O DEVARAJ H.S. AGED ABOUT60YEARS, RESIDING AT HIREKOLALE VILLAGE, CHIKKAMAGALURU-577 101. PETITIONER (BY SRI. DILIP KUMAR I.S.,ADVOCATE) AND:

1. STATE OF KARNATAKA BY CHIKKAMAGALUR RURAL POLICE REPRESENTED BY STATE PUBLIC PROSECUTOR, HIGH COURT OF KARNATAKA BANGALORE - 560 001.

2. KALYANA KUMARA S/O BASAVARAJU, AGED ABOUT 40 YEARS, R/O GOWRI KALUVE, VIJAYAPURA CHIKKAMAGALURU-577 101.

3. SUDEERA S/O DYAVEGOWDA, AGED ABOUT 45 YEARS, R/O VAJUVALLI, HACHADAMANE POST, CHIKKAMAGALURU-577 111.-. 2 - NC:

2024. KHC:15671 WP No.29329 of 2023 4. RAGHU C.M. S/O MANJUNATHA GOWDA, AGED ABOUT 46 YEARS, R/O NEAR CHETHANA NURSING HOME, CHIKKAMAGALURU-577 101. RESPONDENTS (BY SRI. M.DIVAKAR MADDUR, HCGP FOR R1; SRI H.N.MANJUNATH PRASAD, ADVOCATE FOR R2 TO R4) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CODE OF CRIMINAL PROCEDURE, 1973 PRAYING TO SETTING ASIDE THE

ORDER

DATED 09.11.2023 IN CC NO.609/2018 PENDING ADJUDICATION BEFORE THE I ADDL. SENIOR CIVIL JUDGE AND JMFC AT CHIKKAMAGALURU AS PER ANNEXURE-A AND DIRECT THE R1 POLICE TO CONDUCT FURTHER INVESTIGATION IN CC NO.609/2018 PENDING ADJUDICATION BEFORE THE I ADDL. SENIOR CIVIL JUDGE AND JMFC AT CHIKKAMAGALURU. THIS PETITION, COMING ON FOR FURTHER HEARING, THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

1 Heard the learned counsel for petitioner and counsel appearing for respondent Nos.1 and 2 and also the learned High Court Government Pleader.

2. This petition is filed praying this Court to issue Writ of Certiorari for setting aside the order dated 09.11.2023 passed in C.C.No.609/2018 pending - 3 - NC:

2024. KHC:15671 WP No.29329 of 2023 adjudication before the I Addl. Senior Civil Judge and JMFC at Chikkamagalur as per Annexure-A and direct the respondent No.1-Police to conduct further investigation in C.C.No.6069/2018 pending adjudication before the I Addl. Senior Civil Judge and JMFC at Chikkamagalur and pass such other order as deems fit in the circumstances of the

case.

3. The factual matrix of case of petitioner before the Police while filing the complaint that, on 03.10.2017, when complaint, her husband-CW2 by name Devaraj and Chethan were near the her house at about 9.00 a.m., the accused persons came and made galata and she lodged the complaint before the Police and on receipt of First Information on 05.10.2017, the complainant police have registered the case in Crime No.367/2017 for the offences punishable under Section 448, 504, 506 R/w Section 34 of IPC. The police after conducting the detailed investigation submitted the final report for the above offences. But, the investigation agency has not recovered the deadly weapons which were used by the accused persons while - 4 - NC:

2024. KHC:15671 WP No.29329 of 2023 occurrence of crime or incident. It is also contended that she has clearly stated in the first information on impact of crime occurred on her husband and in further, the alleged note of her husband is annexed along with the first information. The said note is also not forthcoming along with the chargesheet. The said note is missed from the chargesheet on the influence of the accused persons. The accused persons have taken away the valuable belonging from her premises. In this regard, the necessary action was initiated. The material pertinent to the said incident is not collected and adopted in the present chargesheet. It needs to collect the said materials to show the aggression in the minds of accused persons. The investigation agency has not collected the record pertaining to treatment strategy of her husband thereby the investigation agency has caused lapse in conducting the detailed investigation. Therefore, it is necessary to refer the matter before the investigating agency to conduct further investigation and to submit further report. Hence, an application is filed under Section 173(8) of Cr.P.C seeking direction to the - 5 - NC:

2024. KHC:15671 WP No.29329 of 2023 Trial Court and direct the Rural Police Station, Chikkamagalur to conduct further investigation of this case and submit further report.

4. The said application is resisted by the accused persons by filing objection contending that the present application is filed with an intention to cause

harassment. The present application is filed after lapse of 6 years and chargesheet was filed on 28.03.2018. The CW1 and CW2 have appeared before the Court on 17.01.2019 and got compounded the offence by understanding the report submitted by investigation agency. That on 06.10.2017, the complainant-Police have visited to the house of CW1 and drawn up the mahazar. Then it shows that the complainant and her husband have been aware about the development of the case. The applicant has contended and made investigation Agency that the investigation Agency has not recovered the deadly weapons as well as the said note. The CW1 has evaded to step into the witness box and deposed anything on oath. No possibility of securing any weapons or alleged material object. The application is - 6 - NC:

2024. KHC:15671 WP No.29329 of 2023 filed with an ultra motive intention. Instead of entering into the witness box, the present application is filed only with an intention to harass the accused persons. The CW1 or her husband have not produced any medical documents before this Court. The allegation made in this regard is not sustainable in the eye of law. The husband of CW1 is chronic defaulter of payment of amount due by him to many creditors as number of cases are pending before various Courts against him and only with an intention to defeat the justice and to make wrongful gain and wrongful loss to those creditors, he has made an application and nothing is available to conduct further investigation in the matter.

5. The Trial Court having considered grounds urged in the application as well as the objections, considered the same and taken note that after securing the accused persons before the Court, this Court recorded the plea of accused persons subsequently the matter set- down for Trial. In order to conduct trial, this Court had issued process to the witnesses on 17.01.2019 and on - 7 - NC:

2024. KHC:15671 WP No.29329 of 2023 filing application under Section 320(8) Cr.P.C, this Court extended permission to the CW1 to got compound the offence and in further action or as the consequences, the accused persons were acquitted for the offence. However, the present case is restored in view of the order passed by this Court in W.P.No.772/2021 dated 07.04.2021 and also taken note of that

the application made before the Trial Court for further investigation and also discussed with regard to the earlier appearance and compromise entered between the parties and an observation is made that in the application on hand, at no point of time, the applicant has taken contention that any other offence will be constituted from the facts and circumstances of the case and also the applicant herein has not pressed occurrence of any other offence out of the incident pressed. In totally, the applicant has not at all contended that any other offence will be constituted from the fact and circumstances and not prayed to assail the accused persons to any other offence than the offence cited. The Trial Court also considering the material available on record, comes to the - 8 - NC:

2024. KHC:15671 WP No.29329 of 2023 conclusion that no need to pass any order for further investigation and applicant also nowhere stated that the alleged offences are existed as on now. The applicant has not at all made it clear, at no point of time that, after occurrence of alleged crime, whether the weapons highlighted were carry out by the accused persons or throw them in the spot. When the matter was set-down for trial, the applicant has invoked the present application and caused delay in filing the application and also an observation is made that on careful consideration, the application is filed after lapse of 6 years and hence, the same is not advisable to order for further investigation and also made an observation that High Court of Karnataka has remanded back the matter to consider the matter in accordance with law by finding with lapses in deciding the application filed under Section 320(8) of Cr.P.C. Hence, no grounds are made out. Being aggrieved by the order of the Trial Court, i.e., rejection of application, the present writ petition is filed.-. 9 - NC:

2024. KHC:15671 WP No.29329 of 2023 6. The counsel would vehemently contend that the respondent Police have not seized any articles which were committed theft by the accused person and not made any efforts to recover the theft articles even though the FIR is registered for committing theft of articles and to prove the guilt of the accused. It is very much required for the prosecution and that the application for further investigation ought to have been allowed by the Trial Court. The petitioners also contend that in the complaint averment a specific averment is also made that there was earlier complaint in the same police station

for having illegally taken away the valuable belongings of the complainant. Though the said complaint was part of the same, the complainant police have not collected the said materials at the time of investigation without which to prove the guilt of the accused beyond reasonable doubt is highly impossible. Further investigation is necessary. It is also contended that the husband of the petitioner was admitted to Government Hospital at Chikkamagalur and then he was shifted to father Mullar hospital as he got - 10 - NC:

2024. KHC:15671 WP No.29329 of 2023 scared and consumed poison and for having admitted to the said hospitals and for having treated in the hospital, the investigating officer have not collected the materials and not investigated the said aspects and the entire investigation lacks and is fatal to the case of the prosecution which requires further investigation by the police without which it will not help the prosecution to prove the guilt of the accused beyond reasonable doubt and hence prayed this Court to order for further investigation in the matter.

7. The counsel also in his argument he vehemently contend that when the complaint is given wherein also specifically mentioned in the complaint itself that before her husband making an attempt to commit suicide, he left with a note in his pocket and the same is enclosed along with the complaint and the same is not seized and it is not the part of the chargesheet. The counsel would vehemently contend that when the husband of the complainant admitted to two hospitals, no such medical records are seized and only drawn the mahazar and also - 11 - NC:

2024. KHC:15671 WP No.29329 of 2023 recorded the statement of witnesses and filed the chargesheet and chargesheet also does not discloses any material except the statement of witnesses and no other articles are seized and made P.F while filing the chargesheet also. Hence, it requires interference of this Court by exercising power and to order for further investigation in the matter.

8. Per Contra, the counsel appearing for respondent Nos.2 to 4 would vehemently contend that the husband of the complainant had borrowed the amount in crores but he did not repay the amount, instead of that made all his attempt falsely implicate these respondents in the case. The counsel also would vehemently contend that this Court earlier when comes to know about that the provision of

Section 320 of Cr.P.C has not been complied and passed an order in W.P.No.772/2021 on 07.04.2021. Thereafter also, C.C.No.609/2018 was restored by quashing the earlier order dated 17.01.2019. The complainant did not appear before the Court and given any evidence and instead of appearing before the Trial - 12 - NC:

2024. KHC:15671 WP No.29329 of 2023 Court, the complainant has filed a vexatious application seeking for an order of further investigation. It is also contended by the counsel that earlier matter was compromised and thereafter alleged the fraud and it is nothing but an abuse of process. Instead of making payment, he is making all his efforts to harass respondent Nos.2 to 4. The counsel also would vehemently contend that even insolvency case is also filed before the Court only with an intention to avoid the payment. Hence, the Court has to take note of conduct of the petitioner.

9. The counsel in support of his argument relied upon the judgment reported in 2022 LiveLaw (SC) 938 in case of Devendra Nath Singh V/s State of Bihar and others and brought to notice of this Court paragraph Nos.13 with regard to the exercising of power under Section 173 of Cr.P.C and discussion was made in paragraph Nos.13(a), 13(b), 13(c), 13(d) and 13(e) with regard to the scope of Section 482 of Cr.P.C. Even when the basic power to direct further investigation in a case where a chargesheet has been filed is with the Magistrate - 13 - NC:

2024. KHC:15671 WP No.29329 of 2023 and it has to be exercised subject to the limitations of Section 173(8) of Cr.P.C in an appropriate case where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 of Cr.P.C Could be exercised to direct further investigation or even re-investigation. The provisions of Section 173(8) of Cr.P.C do not limit or affect such powers of the High Court to pass an order under Section 482 of Cr.P.C for further investigation or re-investigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice. Even when the wide powers of the High Court in terms of Section 482 of Cr.P.C are recognized for ordering further investigation or re-investigation, such powers are to be exercised sparingly, with

circumspection, and in exceptional cases. The powers under Section 482 of Cr.P.C are not unlimited or untrammelled and are essentially for the purpose of real and substantial justice. While exercising such powers, the High Court cannot issue directions so as to be impinging upon the power and - 14 - NC:

2024. KHC:15671 WP No.29329 of 2023 jurisdiction of other authorities. The counsel referring this judgment would vehemently contend that in view of discussions made by the Apex Court and also considering the material on record, it is not a case for exercising the power under Section 173(8) of Cr.P.C and the application is rightly rejected by the Trial Court. Hence, it does not require any interference.

10. The counsel appearing for the State in his argument would vehemently contend that the Trial Court taken note of the application filed before the Trial Court and counsel was unable to give any explanation with regard to the observation made by this Court regarding not enclosing of note left by the husband of the complainant before making an attempt to commit suicide as well as non-seizure of any medical records. This Court directed the Investigating officer to be present before the Court and I.O is present before the Court and no answer from the I.O with regard to non-seizure of medical records, since the husband of the complainant took treatment at Chikkamagalur hospital as well as at father - 15 - NC:

2024. KHC:15671 WP No.29329 of 2023 Mullar hospital at Mangalore and only I.O says that when H.C was sent to the father Mullar hospital, he was unable to record the statement of complainant since the Doctor has advised him that the victim is not in a position to make the statement. But, I.O says that later on he recorded the statement of the victim.

11. Having heard the petitioners counsel and also the counsel appearing for the respondents as well as the HCGP and also considering the submission of I.O and also on perusal available on record particularly Annexure-C which is filed along with Writ Petition, a specific allegation is made on 05.10.2017 in the complaint that the accused person caused life threat against her husband as well as abated him to commit suicide and also mentioned with regard to the incident dated 03.10.2017

about they came and made the threat at 9.00 a.m., and also made an allegation in the complaint that on 25.10.2017, a complaint was given with regard to taking of articles and in the complaint itself, it is stated that nothing they could do in view of the same and an allegation is made that as - 16 - NC:

2024. KHC:15671 WP No.29329 of 2023 abatement of suicide and statement is made that if he fails to commit the suicide, they are going to take away his life. Hence, on the very same day i.e., on 03.10.2017, her husband attempted to commit suicide and hence a specific allegation is made in the complaint about the role of the respondent Nos.2 to 4. It is also stated in the complaint itself that immediately he was taken to the government hospital at Chikkamagalur and also found note in the pocket of her husband and the same was given to her, the said note was enclosed along with the complaint and also stated that he was taken for further treatment to father Mullar hospital. In the complaint also a reference was made with regard to the earlier complaint with regard to the incident dated 27.09.2017 and hence request was made and case was also registered on 05.10.2017 and reference is also made in the note regarding threat and taking a decision with regard to an attempt to commit suicide.

12. Having perused the material available on record along with chargesheet except the statement of witnesses - 17 - NC:

2024. KHC:15671 WP No.29329 of 2023 CW1 to CW7 i.e., eye witnesses CW2 to CW4 and also the mahazar witnesses, nothing is enclosed in the chargesheet. It is also important to note that when the complaint itself specific about the note that, it is kept in his pocket before attempting to commit suicide, the same is not seized and that is not a part of the chargesheet while filing the chargesheet. Even I.O says that he made an attempt to recover the same, but they have not responded to recover the note, the same is also not enclosed along with the chargesheet with regard to the attempt is made to secure the original note. It is the duty of the I.O when an allegation is made that due to life threat and earlier incident was taken on 25.09.2017 as well as a specific date is mentioned with regard to the present incident dated 03.10.2017 and also I.O who is present before the Court himself states that the victim who made an attempt to commit suicide was not in a position

to make the statement and ought to have taken note of the gravity of the offence and seriousness of the offence. Even not collected any medical records of either - 18 - NC:

2024. KHC:15671 WP No.29329 of 2023 at Chikkamagalur hospital or father Mullar hospital at Mangaluru. Nothing is enclosed along with the chargesheet except the statement of witnesses and also the mahazar. It is nothing but a callous attitude of the I.O and when the serious allegation is made and also during the course of investigation, the I.O comes to know about the condition of the victim was critical and instead of conducting proper investigation, seizure of alleged note as well as the medical records and nothing is collected during the course of investigation of medical records while filing the chargesheet. I have already pointed out that along with chargesheet, except recording of statement of witnesses i.e., table work made by him and no incriminating evidence is collected by the I.O during the course of investigation and also no proper explanation before this Court when he has been summoned before this Court. The very conduct of the I.O is against the interest of criminal administration of justice. When the complainant files complaint and make specific allegation against the accused persons, it is the obligatory on the part of I.O to collect the - 19 - NC:

2024. KHC:15671 WP No.29329 of 2023 incriminating material against the accused persons with regard to the incident is concerned. The fact that he comes to know about the incident, the victim was immediately taken to the Chikkamagaluru hospital as well as father Mullar hospital wherein he took treatment for his survival of his life. Under such circumstances, he has not made any efforts to collect the medical records and it is nothing but hand in glove with the accused persons and instead of collecting the incrimination materials, only he has drawn the mahazar and also he has done only table work of recording statements of witnesses. In the absence of the medical records with regard to when victim had made an attempt to commit suicide and also specific allegation is made against the accused persons that they are responsible for taking extreme step for committing suicide and when the said note is also enclosed along with the complaint, the same is not forthcoming in the chargesheet and the I.O failed to produce the original note and enclosed copy of the same along with chargesheet

and even I.O has not collected any medical records and it is - 20 - NC:

2024. KHC:15671 WP No.29329 of 2023 nothing but an investigation is eye wash in filing the chargesheet that too only invoking the offence punishable under Section 448, 504 and 506 R/w Section 34 of IPC. Hence, it is a appropriate case to order for further investigation under Section 173(8) of Cr.P.C. No doubt there is a delay in filing the application and also this Court having entertained the earlier writ petition which was filed before this Court. When an allegation of fraud has been alleged against the respondent Nos.2 to 4 in getting compromising the matter invoking Section 320 of Cr.P.C. This Court in W.P.No.772/2021 made an observation in paragraph No.6 and that if really the matter has been settled among the parties in respect of the case which has been pending, the respondents have brought to notice of the Court that the other case was pending and suppressing the same, though the case was filed prior to entering into the compromise and obtained the order from the Lok-adalath. Hence, this Court comes to the conclusion that it is a clear case of fraud as contended by the learned counsel for the petitioner and that persuaded the - 21 - NC:

2024. KHC:15671 WP No.29329 of 2023 complainant in getting an order before Lok-adalath suppressing the fact that case is pending against the petitioners husband. In view of the petition filed earlier before this Court and this Court also passed the order on 07.04.2021. Thereafter only the matter was restored in C.C.No.609/2018. When the notices are issued to the witnesses, then only they came to know about all these materials are not found along with the chargesheet. Hence, they made an application seeking permission of the Court to order for further investigation in the matter. When such being the case, the very contention that the present application is filed after lapse of 6 years cannot be accepted in view of earlier proceedings and also the earlier compromise was set-aside and matter was restored before the Trial Court in the year 2021. When the case was set- down for evidence only, they came to know about no such materials are found along with chargesheet and then an application is filed under Section 173(8) of Cr.P.C.

13. This Court also would like to refer Section 173(8) of Cr.P.C which is extracted herein below: - 22 - NC:

2024. KHC:15671 WP No.29329 of 2023 Section 173 - Report of police officer on completion of investigation.- (1) Every investigation under this Chapter shall be completed without unnecessary delay. (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)

14. Having considered the Section 173(8) of Cr.P.C, the proviso is very clear that nothing in this Section is deemed to be preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and whereupon such - 23 - NC:

2024. KHC:15671 WP No.29329 of 2023 investigation, the officer in charge of Police Station obtains further evidence, oral or documentary evidence, he shall forward to the Magistrate a further report. The reports regarding such evidence in the form prescribed. 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). Having perused the proviso under Section 173(8) of Cr.P.C, it is very clear that the same has to be exercised and it is settled law that the Court ordinarily should not interfere with the statutory powers of investigating agency. The Court cannot issue directions to investigate the case from a particular angle or by a particular agency. However, the Court has to take note of if any lapses on conducting proper investigation, the Court can exercise power under Section 173(8) of Cr.P.C.

15. This Court would like to refer judgment of the Apex Court in case of Hasanbhai Valibhai Qureshi V/s State of Gujarat and others, reported in (2004) 5 SCC347:(AIR 2004 SC2078, in paragraph No.13 of - 24 - NC:

2024. KHC:15671 WP No.29329 of 2023 the judgment referred the judgment of Ram Lal Narang V/s State (Delhi Admn.), which was reported in (1979) 2 SCC322: (AIR 1979 SC1791, it was observed that further investigation is not altogether ruled out merely because cognizance has been taken by the Court. When defective investigation comes to light during Course of Trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the moreso in this case, that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need of an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the Courts. Further observed that, in view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law.-. 25 - NC:

2024. KHC:15671 WP No.29329 of 2023 16. This Court would also like to refer the judgment of this Court reported in 2019 (2) AKR325in case of M.Rubin Britto V/s Inspector of Police, Kuduthini Police Station, Ballari and others wherein also this Court discussed with regard to the exercising of powers under Section 173(8) of Cr.P.C and held that even if Magistrate committing case to the Sessions Court on account of involvement of offence exclusively triable by Sessions Court, even Sessions Court can exercise power under Section 173(8) of Cr.P.C and direct further investigation and in detail this Court discussed about the scope of Section 173(8) of Cr.P.C and permitted by invoking Section 173(8) of Cr.P.C when there is a defective investigation was made.

17. No doubt the counsel appearing for the respondent Nos.2 to 4 relied upon the judgment reported in 2022 LiveLaw (SC) 938 and in paragraph No.13(a) to 13(d) of the judgment in detail discussed and also discussed the scope of Section 173(8) of Cr.P.C as well as under Section 482 of Cr.P.C. No doubt the Apex Court also - 26 - NC:

2024. KHC:15671 WP No.29329 of 2023 held that such are to be exercised sparingly with circumspection and in exceptional cases. No doubt the Court cannot

exercise power under Section 173(8) of Cr.P.C as and when an application is filed. But the Court has to apply its mind while passing and invoking an order under Section 173(8) of Cr.P.C and the scheme of the Code of Criminal Procedure also to be ensured that a fair trial and that would commenced only after a fair and just investigation. But, in the case on hand, I have already pointed out no such fair investigation has been conducted by the investigating officer. The Court has to see that ultimate aim of every investigation and inquiry, whether by the Police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and innocence are not arrayed to stand Trial and also scope of Section 173(8) of Cr.P.C is very clear that even when basic power to direct further investigation in a case where a chargesheet has been filed is with the Magistrate and is to be exercised subject to the limitations of Section 173(8) of Cr.P.C that to in an appropriate case. Even also can - 27 - NC:

2024. KHC:15671 WP No.29329 of 2023 exercise the inherent powers under Section 482 of Cr.P.C and the same has to exercised to direct further investigation or re-investigation. In this case no need to order for any re-investigation but it is a case for passing an order for further investigation is concerned. No such note which was kept by the victim before making an attempt to commit suicide is not placed along with chargesheet. Apart from that no medical records of the victim who had taken the treatment at Chikkamangaluru hospital and father Mullar hospital were not the part of the chargesheet. No investigation is also conducted with regard to the same i.e., for seizure is concerned. No attempt is made to secure the medical records also except stating that he sent the Head Constable to record the statement of the victim. I have already pointed out that the I.O comes to know about the condition of the victim, when the victim is in critical condition and even when he was not able to make any statement and the same is also comes to know about through a Doctor when the Head Constable went to the hospital. Thereafter, I.O has not - 28 - NC:

2024. KHC:15671 WP No.29329 of 2023 made any efforts in conducting the proper investigation. Hence, it is a fit case to exercise the power under Section 173(8) of Cr.P.C.

18. Having considered the reasoning given by the Trial Court, the Trial Court only carried away with remanding the matter by this Court and the Trial Court not taken note of seriousness of allegations and the investigating officer about non-seizure of note which was kept by the victim who made an attempt to commit suicide as well as the medical records are also not secured. Nothing is discussed before the Court except in coming to the conclusion that already 6 years has been elapsed by filing of chargesheet and subsequent development with regard to the filing of chargesheet is also not taken note of by the Trial Court. The order passed by the Trial Court is also requires to be set-aside. The Trial Court not applied its judicious mind while continuing the fair Trial of a case when the relevant materials are necessary and the same are not along with the chargesheet, the same has not been considered by the Trial Court. The Trial Court has not - 29 - NC:

2024. KHC:15671 WP No.29329 of 2023 applied judicious mind and passed perverse order without considering the grounds which have been urged in the application for further investigation is concerned. Hence, it requires interference and to set-aside the order of the Trial Court by allowing this Writ Petition.

19. It is appropriate to take note of conduct of I.O during the investigation. I have already pointed out that he has not done anything during the course of investigation except drawing of mahazar and recording of statement of witnesses and not collected any relevant medical records from the concerned hospitals as well as even not enclosed note which was kept by the victim before attempting to commit suicide, the same is also not part of records. It is nothing but the lapses on the part of the I.O. Hence, it is appropriate to direct the concerned Superintendent of Police, Chikkamagaluru to initiate appropriate proceedings against the I.O with regard to the dereliction of his duty in conducting the proper investigation in the case. The I.O who is present before Courts says that he is working within jurisdiction of - 30 - NC:

2024. KHC:15671 WP No.29329 of 2023 Chikkamagaluru District only from last 6 years. Hence, Superintendent of Police, Chikkamagalur is directed to submit the report with regard to the disciplinary action taken against the I.O within 6 months from today.

20. In view of discussions made above, I pass the following:

ORDER

i) The Writ Petition is allowed. ii) The impugned order passed by the Trial Court in C.C.No.609/2018 dated 09.11.2023 is hereby set-aside. iii) The application filed by the applicant under Section 173(8) of Cr.P.C is hereby allowed. iv) The Superintendent of Police at Chikkamagalur District is directed to appoint a new Investigating Officer to conduct the proper further investigation and submit further report before the Trial Court within 3 months. v) The Trial Court is directed not to precipitate the matter in recording evidence of witnesses till - 31 - NC:

2024. KHC:15671 WP No.29329 of 2023 further investigation report is filed by the investigating officer before the Trial Court. vi) The Superintendent of Police, Chikkamagalur is directed to initiate disciplinary proceedings against the Investigating Officer with regard to his lapses in the investigation and submit the report for having taken disciplinary action against the I.O within 6 months from today. Sd/- JUDGE RHS List No.:

1. SI No.:

8.

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