

Awadhesh Kumar Vs. the State of Bihar and ors.

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Court : Patna

Decided On : Aug-12-2002

Judge : R.S. Garg, J.

Appeal No. : Cri. Misc. No. 23851 of 2001

Appellant : Awadhesh Kumar

Respondent : The State of Bihar and ors.

Disposition : Revision Allowed

Judgement :

R.S. Garg, J.

1. Heard earned Counsel for the parties.

2. In the matter of private complaint the learned Magistrate passed an order under Section 156 of the Code of Criminal Procedure and required the police to investigate into the offence and submit the charge-sheet. Accordingly the charge-sheet was submitted and the accused was summoned. The Court took cognizance of the matter and thereafter, proceeded further with the matter. Charges were levelled against the accused on 27.1.1997. The first witness for the prosecution was examined on 18.2.1997. Bailable warrants were issued against the witnesses on 21.21.1998 and since thereafter, nothing was done in the matter. The accused

although was in attendance but unfortunately the trial Court took an approach of apathy and did not proceed further. It appears that on 6.5.2000 the Investigating Officer made an application under Section 173(8) of the Code of Criminal Procedure seeking the permission of the Court and requiring a mandate against the accused to give his signatures for purposes of comparison an analysis. The application was opposed by the accused and was rejected by the trial Court, The original complainant Prem Chand Ram being aggrieved by the order dated 6.5.2000 passed by the learned Judicial Magistrate 1st Class, Barh in G.R. Case No. 142/96 (Trial No. 166/2000) took up the matter in revision before the Court of Sessions. The learned 1st Addl. Sessions Judge, Barh heard learned Counsel for the parties in Cr. Revision No. 41/2000, set aside the order passed by the learned trial Court, allowed the revision and directed the Sub-Inspector R.C. Rai to take signature of Opposite Party No. 2 in the manner as the prosecution agency wants.

3. Being aggrieved by the said order dated 19.6.2001 the accused has come to this Court, inter alia, submitting that the learned revisional Court was absolutely unjustified in interfering with the matter specially when the charges were already framed against the accused and one of the witnesses for the prosecution was examined. It was contended that application of Section 173(8) of the Code of Criminal Procedure must have some end otherwise the investigation and prosecution would be endless. It is further contended that Section 173(8) Cr.P.C. must have a reasonable nexus with the investigation to be conducted further and the charge-sheet already filed. On the other hand learned Counsel for the private complainant submits that looking to the nature of the allegations and the half-hearted investigation made by the prosecution agency the signatures were required to be obtained to come to a positive conclusion that the documents in dispute were signed or forged by the accused or not.

4. Learned Counsel for the State advancing the said argument further submitted that the allegations against the accused are that they forged the signature of the complainant, took delivery of the material and thereby defrauded the authorities so also the complainant, and as powers under Section 173(8) of the Code of Criminal Procedure do not cease simply on submission of the charge-sheet or on framing of the charge or after examination of a witness or two, the revisional Court was

absolutely justified in issuing a direction in favour of the prosecution agency.

5. I have heard earned Counsel for the parties at length.

6. The core question for consideration before the Court is that to what extent Section 173(8) Cr.P.C. would survive. Should it have the life upto a particular time or should it be allowed to live endlessly?

7. Section 173(8) Cr.P.C. relates to submission of a report by a Police Officer on completion of the investigation. The report submitted by such a Police Officer is ordinarily known as a charge-sheet. Section 173(8) of the Code of Criminal Procedure reads as under:

173(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).

8. Even prior to enforcement of the 1973 Act, number of the Courts including the Supreme Court have held that submission of the charge-sheet itself would not bring an end to the power of the investigating agency because the investigating agency is entitled to make further investigation and bring further and better material before the Court to connect the accused with the alleged crime. The Courts have already found that the prosecution agency can make further investigation to find whether the accused against whom a charge-sheet has already been filed can be booked for other offences and some other accused-persons can also be brought to the book of rules.

9. A fair persual of Section 173(8) Cr.P.C. would make it clear that nothing under Section 173 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 regarding such evidence in the form as prescribed. Section 173(8) Cr.P.C. does authorize a Police Officer to make a further investigation into the matter.

10. The basic law in relation to the powers under Section 173(8) of the Code of Criminal Procedure as conferred upon a Police Officer is discussed in the matter of Ram Lal Narang and Anr. v. Om Prakash Narang and Anr. : 1979 CriLJ1346 . In the said matter the Supreme Court has observed that it is the duty of the Investigating Officer to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. From the language of the Supreme Court it would clearly appear that it would depend upon the Magistrate to decide about the further course of action depending upon the stage at which the case is before him. The Supreme Court has further observed that if the Magistrate has already taken cognizance of the offence, but has not proceeded with the enquiry or trial he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused, in a single enquiry or trial. The Supreme Court has also observed that if the Magistrate has already taken cognizance and proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case.

11. A fair persual of Section 173(8) Cr.P.C. would make it clear that the prosecution agency is free to make further investigation into the involvement of the accused into some other offences for which he can be booked and the offences are the consequence of the first offence or are in sequence of the first offence. The prosecution agency would also be entitled to make further investigation into the involvement of other accused persons who otherwise are liable but have not been joined as accused in the first charge-sheet. The investigation must be into any further offence or in relation to involvement of the other accused persons but not in relation to the very same accused just for purposes of making a fishy enquiry. In the present case undisputedly the Officer, who had scrutinized the case diary,

required the Investigating Officer to obtain the signatures and accordingly the signatures were obtained but now the prosecution agency has made an application before the Court that the accused be required to sign in a particular fashion so that his signatures may be compared and the report of hand-writing expert or the expert on the questioned documents may be submitted before the Court. The question arises that what should be the life of Section 173(8) of the Code of Criminal Procedure?

12. If the arguments of the learned Counsel for the complainant and the State Government are accepted then there would be no end to the investigation. Even on the date when the accused is entering his defence or is submitting his arguments, the prosecution agency may make an application that they may be allowed to make further investigation or be allowed to file an additional or supplementary charge-sheet. If this course is allowed, there would be no end to a prosecution and the same may ultimately put a prosecution in the hands of a cunning or a shrewd Police Officer. Section 173(8) Cr.P.C., if read in its true perspective, would make it clear that the concerned officer would not be entitled to make further investigation in respect of the same offence in relation to the same accused after he submits a report under Sub-section (2) of Section 173 of the Code of Criminal Procedure. The concerned Police Officer may make investigation into other offences for which the same accused can be booked. The concerned Police Officer can make further investigation into the same occurrence to find involvement of the other accused persons. The law does nowhere say that at the stage after the charges are framed and the witnesses are examined, the prosecution agency would be allowed or can be allowed to make further investigation. If this course is adopted, it would cause serious prejudice to the defence of the accused. An accused in fact discloses his defence when he starts cross-examining the prosecution witnesses. After the prosecution witnesses are examined and the accused brings out his defence, if at such stage, the prosecution is allowed the right of further investigation then the prosecution agency would certainly nullify the defences raised by the accused.

12. In our system of criminal jurisprudence has a great role to play. The accused is deemed to be innocent unless found guilty. The prosecution agency is required

to prove its case beyond shadow of doubt or to a reasonable certainty, that is, where a prudent man but for recording the guilt of the accused would not record anything else. The prosecution is required to be armed with all such weapons which may disarm the accused and make him absolutely defenceless.

13. Taking into consideration the scheme of the Code of Criminal Procedure specially Section 173, I am of the opinion that the police agency cannot be allowed to make further investigation into the very same offence in relation to the same accused, if the trial has already commenced.

14. The learned trial Court was certainly justified in rejecting the application of the prosecution and the revisional Court was unjustified in the interfering with the matter.

15. As a result of the discussions aforesaid, the revision deserves to be allowed. It is accordingly allowed. The order passed by the revisional Court is set aside and that of the trial Court is restored.

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