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**Navdeep Vs. State**

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**SooperKanoon Citation** : sooperkanoon.com/686958

**Court** : Delhi

**Decided On :** Jan-24-2005

**Reported in** : 118(2005)DLT105; I(2005)DMC552; 2005(80)DRJ486

**Judge** : Manju Goel, J.

**Acts** : Code of Criminal Procedure (CrPC) - Sections 169, 173, 173(8) and 190; Indian Penal Code (IPC) - Sections 304B and 498

**Appeal No.** : Crl. Revision Petition No. 836/2003

**Appellant** : Navdeep

**Respondent** : State

**Advocate for Def.** : R.P. Luthra, Adv.

**Advocate for Pet/Ap.** : A.K. Goyal, Adv

**Disposition** : Petition dismissed

**Judgement** :

**Manju Goel, J.**

1. Sunita, wife of the petitioner Navdeep died of burn injuries on 5.8.2001. On 3.8.2001 an information was received by sub inspector Kishan Kumar of PS Mandavli in respect of the incident in which Sunita had put kerosene oil on herself.

Sunita's statement was recorded by the SDM, Preet Vihar. In her statement she attributed burn injuries to an accident. The mother of the deceased made a statement indicting the petitioner. Statements on some other witnesses were recorded and thereafter a challan u/s 498 IPC was filed. However, the Magistrate observed that a case should have been registered u/s 304B & 498 A IPC. He found that the local police had not done sufficient investigation. Vide order dated 9.5.2002, he directed the DCP (East) to conduct an inquiry into the whole episode and to take action against any official if found guilty for any lapse or inaction and to file a report. This order was challenged before this court and vide order dated 18.2.2003, this Court again directed that compliance of the Magistrate's order dated 9.5.2002 be made. Subsequent to the further investigation the police filed a report saying that some police officials had been censured. However no supplementary challan was filed. Assistant Public Prosecutor and the counsel for the complainant requested the Magistrate for ordering further investigation. After hearing the accused and the prosecution, the Magistrate passed the impugned order directing the Ahlmed to return the file to the investigation and directed DCP (East) to monitor the investigation so that truth can come out.

2. The petitioner challenges this order only on legal grounds. According to his counsel, the Magistrate has no powers to order further investigation. He relies upon the judgment of the Supreme Court in the case of Union of India v. Prakash P. Hinduja 2003 (2) JCC 1164 and Dr. Kapil Garg v. State : 107(2003)DLT228 .

3. None of the two judgments however provide any support to the plea raised by the petitioner. Section 173(8) clearly gives the power to order further investigation.

' 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).'

4. In fact the judgment of Dr. Kapil Garg (Supra) relied upon by the petitioner itself enumerates the options available to the Magistrate when a final report is filed. These are as under:

Para 13: 'As is apparent from the aforesaid provisions of Sections 169, 173 and 190 Cr.P.C. the Magistrate has the following options whenever a final report u/s 173 Cr.P.C. is submitted to him:-

(i) In case the report concludes that an offence is made out, he may either accept the same and take cognizance of the offence or disagree and drop the proceedings.

(ii) In case the report concludes that offence is not made out, he may agree with it and discharge the accused.

(iii) If he finds that the investigation is incomplete and unsatisfactory, he may direct the police to further investigate the matter.'

Referring to the third clause, the learned counsel for the petitioner says that the Magistrate may have the power to direct further investigation but he cannot do so if he is requested for this purpose by the complainant. I cannot accept such an argument.

5. The judgment of Union of India v. Prakash Hindja (supra) does not in any way limit the power of the Magistrate in ordering further investigation. This judgment actually does not deal with the provisions of the Section 173(8) Cr.P.C. All that this judgment says is that method and manner of conducting an investigation should be left entirely free of any interference by a Magistrate. In the present case, the Magistrate has not offered any inference in the conduct of investigation. The investigation has itself found certain lapses on the part of the investigating police officer yet instead of providing a supplementary report to the court, the investigation has preferred to remain silent. In this situation if the Magistrate orders further investigation that cannot be in any way be said to be illegal. The judgment in Prakash Hinduja (supra) does not deal with the question at hand.

6. I do not find anything wrong in this judgment, the petition is accordingly dismissed.

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