

C.B.i. Vs. Thomas

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Court : Kerala

Decided On : May-18-2001

Reported in : 2001CriLJ3167

Judge : Mr. N. Krishnan Nair, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 156(3) and 173

Appeal No. : Cri.L.R.P. No. 808 of 2000

Appellant : C.B.i.

Respondent : Thomas

Advocate for Def. : A.X. Varghese, Adv.

Advocate for Pet/Ap. : K.P. Satheesan, Adv.

Judgement :

ORDER

N. Krishnan Nair, J.

1. This revision is directed against the order dated 23.6.2000 of the Chief Judicial Magistrate, Ernakulam rejecting the final report No. 3/99 in RC 8/S/93/SPE/KER filed by the D.S.P., CBI/SIC-II, New Delhi and also directing the C.B.I. to conduct fresh investigation under S. 156(3) of the Cr.P.C.

2. The unfortunate victim in this case one Sr. Abhaya, who was the daughter of Sri. M. Thomas and Leelamma. The deceased Sr. Abhaya was an inmate of St. Pious Xth Convent, Park Lane, Kottayam. She was a student of the Pre-degree course in the B.C.M. College, Kottayam. On 27.3.1992, her dead body was found in a well near the kitchen of St. Pious Convent Hostel. Crime No. 187/92 was registered by the Kottayam West Police Station under the caption 'unnatural death'. Originally, the investigation was conducted by the local police and subsequently, the investigation was handed over to the CBCID, Kottayam. Later, the investigation was taken up by the C.B.I. After completing head investigation, the C.B.I. filed report under S. 173 of the Cr.P.C., saying that the case may be ordered to be closed as untraced. The learned Chief Judicial Magistrate rejected the same and directed the C.B.I. to conduct further investigation sincerely, honestly and impartially, and without yielding to any pressure from any corner. In obedience to the order of the Chief Judicial Magistrate, the C.B.I. conducted further investigation in the case. On the basis of the further investigation conducted by the C.B.I. following conclusions are arrived at:-

(A) The death of Sr. Abhaya was not natural.

(B) Sr. Abhaya did not commit suicide as concluded by the CB-CID

(C) The death of Sr. Abhaya was not due to any accident.

(D) The cause of death of Sr. Abhaya was homicide.

But according to C.B.I., despite best efforts made during the investigation, the identity of the culprits could not be established. Therefore, the CBI requested the Chief Judicial Magistrate to accept the report and treat the crime No. 8(5)/93-SPE/KER arising out of case F.I.R. No. 187/92 dated 27.3.1992 dated 27.3.1992 PS Kottayam (West), Kottayam as closed being untraced.

3. On going through the report and also the case diary, the Chief Judicial Magistrate was not inclined to accept the report. According to the Chief Judicial Magistrate, the investigation conducted by the C.B.I. is quite unsatisfactory and a detailed and thorough questioning using modern scientific methods is necessary to

find out the real culprits. Accordingly, the final report was again rejected and C.B.I. was directed to conduct fresh investigation under S. 156(3) of the Cr.P.C. The order is seriously challenged in this revision.

4. The learned counsel for the petitioner strongly contended that the order of the court below is clearly illegal and cannot be sustained either in law or on facts. According to the learned counsel, the lower court seriously erred in directing the petitioner to conduct fresh investigation under S. 156(3) of the Cr.P.C. Relying on the decision of the Supreme Court in *Bhagwant Singh v. Commissioner of Police and Anr.* (AIR 1985 SC 1285), the learned counsel contended that the Magistrate can direct only a further investigation under S. 156(3) of the Cr.P.C. He further contended that the Chief Judicial Magistrate has no power to direct the C.B.I. to conduct an investigation into any offence, in view of the decision of the Supreme Court in *Central Bureau of Investigation through S.P., Jaipur v. State of Rajasthan & Anr.* (JT 2001(1) 624).

5. The question for consideration is whether the lower court was justified in rejecting the report and directing the C.B.I. to conduct fresh Investigation under S. 156(3) of the Cr.P.C. It is settled position that the Magistrate even after submission of a report by the investigating officer under S. 173 of the Cr.P.C. In this case after rejecting the report filed under S. 173, the Chief Judicial Magistrate has directed the C.B.I. to conduct fresh investigation under S. 156(3). At the outset I must say that the Chief Judicial Magistrate has erred in directing the Investigating Agency to conduct fresh investigation under S. 156(3) since a final report was filed under S. 173. Therefore, the order of the Magistrate directing the C.B.I. to conduct fresh investigation under S. 156(3) of the Cr.P.C., if the Magistrate is of the opinion that the investigation is not satisfactory and further investigation is necessary, the Magistrate may direct the police to make further investigation. In this case, on a consideration of the final report and the statements of the witnesses, the learned Magistrate is of the opinion that the investigation in the case is quite unsatisfactory. I see on reason to disagree with the finding of the learned Magistrate. But instead of directing the C.B.I. to conduct fresh investigation, the lower court should have directed the C.B.I. to make further investigation.

6. Relying on the decision of the Supreme Court in Central Bureau of Investigation through S.P., Jaipur v.State of Rajasthan & Anr. (JT 2001(1) SC 624), the learned counsel for the petitioner strongly contended that the Chief Judicial Magistrate has no power to direct the C.B.I. to conduct investigation into any offence. No doubt, in the decision referred to by the learned counsel, it has been held by the Supreme Court that the Magistrate has no power to direct the C.B.I. to conduct an investigation into any offence under S. 156(3) of the Cr.P.C. In this case, the investigation was taken up by the Cochin Branch of the CBI on the request of the Government of Kerala. This case was transferred to SIC-II branch of C.B.I., New Delhi in July, 1994 from C.B.I. Cochin Branch. Since the investigation in this case was not taken up by the C.B.I. at the instance of the Chief Judicial Magistrate, the decision of the Supreme Court referred to by the learned counsel for the petitioner is not applicable to the facts of this case. If a final report filed by the C.B.I. under S. 173 of the Cr. P.C. before a Magistrate is rejected and the Magistrate is of the opinion that the investigation is quite unsatisfactory, the Magistrate can direct the C.B.I. to conduct a further investigation. It is settled position that further investigation can be conducted only by the investigating agency which originally investigated the case. (See K. Chandrashekar v. State of Kerala (AIR 1998 SC 2001 and Vijaykumar v. Kamarudhin (1999 (1) KLT 184).

7. In the result, the order of the lower court is modified and the C.B.I. is directed to conduct further investigation in the case and to make a further report.

8. The revision is disposed of as above.