

Abdul Mazid Vs. State of Rajasthan

Abdul Mazid Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/764831

Court : Rajasthan

Decided On : Jul-05-1988

Reported in : 1988WLN(UC)339

Judge : D.L. Mehta, J.

Appeal No. : S.B. Cr. Misc. Petition No. 459 of 1988

Appellant : Abdul Mazid

Respondent : State of Rajasthan

Judgement :

D.L. Mehta, J.

1. This Misc. Petition has been preferred by the petitioners being aggrieved with the application submitted by the Investigating agencies for the purpose of re-investigation in the case.

2. Learned Counsel for the petitioner submitted that the final report has been submitted under Section 169 of the Cr.PC. He further submits that the learned Magistrate, has not passed any order on the final report. The contention of Mr. Bajwa, in that there is no provision under Section 169 of the Cr.PC to grant permission for the re-investigation or further investigation of the case. Mr. Bajwa, learned Counsel of the petitioners further submits that Section 173 Cr.PC does not

apply as charge-sheet under Section 173 has not been filed.

3. I agree with Mr. Bajwa, that Section 173 applies only when charge-sheet and part of the charge-sheet has been filed. As far as Section 169, Cr.PC is concerned, it is true that there is no provision-in Section 169 of the Cr.PC empowering or enabling the Police Officer, or the Investigating Agencies to make the prayer that they should allow further investigation or re-investigation in the case. Section 173, Cr PC provides that with the permission of the court, even after submissions of the charge-sheet or interim charge-sheet, the investigation should be carried-out. There is no such provision under Section 169 of the Cr.PC. Section 173 Cr.PC is a guide for the purpose of interpreting the provisions of Section 169 of the Cr PC and the submission made by Mr. Bajwa, that under Section 173 Cr PC the charge-sheet is submitted and the stage of investigation comes to an end. The stage of enquiry trial starts after the submission of the charge-sheet so it was considered necessary that in such matters for the purpose of further investigation the permission of the Court should obtained. How ever, it does not provide for the purpose of re-investigation.

4. Further investigation or re-investigation will have to be distinguished because both of them carry different meanings, different powers and different duties. In a case of further investigation, there may be a possibility of the disclosure of the further evidence which may not be available to the Investigating Officer, at the time of submission of the report. The evidence may be in-existence but the Investigating Agency may be ignorant aboutt he existence and he comes to know about existence of the evidence from some other sources. In a case of re-investigation the possibility of remis may be there and the Investigating Agency superior in rank may consider that on account of remis on the part of the Investigating Agency the case should be re-investigated. The re-investigation should only be done only when there is a fresh material on record to satisfy the conscience of the authorities and the conscience of the officer that there was a remis on the part of the Investigating Agency and in the interest of justice it is necessary to have the re-investigation or fresh investigation. This Court has already taken the view earlier that the law should be interpreted in a way which will serve the cause of justice, even the criminal law including the IPC should be

interpreted in a way which may meet the needs of justice of the present time. We should not shut our eyes to the changing pattern of the society. I am fortified in taking this view by the judgment of the Hon'ble Supreme Court in the case of Mobarik Ali Ahmed v. State of Bombay 0043/1957 : 1957 CriLJ1346 . There Lordship held 'It is also well settled that the Court can exercise the powers which are necessary for just disposal of the case or in the interest of justice. It is not necessary that there should be any specific provision in the law. Unless by specific provision or implication of the law forbids the doing of the particular act, the Court has power to pass any order which may be necessary in the interest of justice.

5. Re-investigation/further investigation is necessary sometimes in the interest of justice, sometimes important piece of evidence is not available to the Investigating Agency that the evidence may be in-existence for the one reason or the other. The Investigating Agency may not be in a position to know about existence of the evidence and this fact may come to the notice at a later stage. In such circumstances, the disclosure of the source of the information will entitle for further investigation in the case. There should be number of other circumstances, which may depend on the facts and circumstances, of the case. It is the duty of the Investigating Officer, that he should act. fairly and he should not act in a way which may prejudice the case of the accused. Further investigation is not meant for harassing the accused but is only meant for securing the justice. In this case I will not like to go into the merits or de-merits of the case. The application is pending before the trial Court and the challenge has been made only on the ground that such application cannot be moved. The trial-court may look into the matter and if there is any possibility of harassment to the accused, it may pass any order which may be just and proper in the facts and circumstances of the case. How ever, I cannot accept the arguments made by the learned Counsel, for the petitioners that the police authorities have no jurisdiction to move an application for further investigation in the case in which they have submitted the final report under Section 169, Cr. PC. I am of the view, that further investigation is a part of the investigation and it is necessary in the interest of justice sometimes free hand should be given to the Investigating Agency in such cases, if interest of justice requires further re-investigation and the court should not interfere ordinarily.

6. In the result, the Misc. petition filed by the petitioner is disposed of accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com