

R. Ramamurthy and ors. Vs. State

R. Ramamurthy and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/827794

Court : Chennai

Decided On : Jul-21-1998

Reported in : 1999CriLJ581

Judge : M. Karpagavinayagam, J.

Acts : Indian Penal Code (IPC) - Sections 120(B), 380 and 406; Code of Criminal Procedure (CrPC) , 1974 - Sections 173(2) and 173(8)

Appeal No. : Crl. Revn. Case No. 945 Crl. M.P. Nos. 4751 and 3525 of 1996

Appellant : R. Ramamurthy and ors.

Respondent : State

Advocate for Def. : C.M. Gunasekaran, Govt. Adv.

Advocate for Pet/Ap. : A. Packiaraj, Adv. ;B. Sriramulu, Adv. for ;N.A. Ravindran, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

M. Karpagavinayagam, J.

1. Could the Magistrate permit the police to reopen the case for further investigation, once the said Magistrate passed an order earlier on the report filed by the police as 'recorded and undetected' This is the question posed before this Court for consideration.

2. The petitioners are the accused in Crime No. 3/90 registered for the offences under Sections 380 and 406 read with Section 120(B) I.P.C. One Vairaprakasam, the petitioner in CrI. M. P. No. 3523/96 requesting for impleading himself as one of the parties, gave a complaint of theft on 12-2-90 to the Inspector General of Police (Crime), Madras. On his direction, the Inspector of Police, CB, CID, Madurai registered a case on 15-2-90 against the petitioners in the above crime. After investigation, on 16-10-92, the Inspector of Police filed a report before the learned Judicial Magistrate, Virudhunagar stating that the case was treated as 'undetected'. On 8-1-93, the learned Chief Judicial Magistrate, Srivilliputhur passed an order as 'Recorded as undetected'. Again on 21-4-95, the Inspector of Police filed a Memorandum requesting for an order to reopen the case for further investigation as some reliable information had been received. On this Memorandum, the learned Chief Judicial Magistrate, Srivilliputhur passed an order as 'Yes. Reopened' on 21-4-95. As against this order, the petitioners preferred this revision questioning the legality of the same.

3. Mr. Packiaraj, the learned counsel for the petitioners would submit that it is well settled that once the learned Magistrate has accepted the report of the Police Officer by the order dated 8-1-93 and endorsed as 'Recorded as undetected', the said order is a final judicial order and the learned Magistrate cannot thereafter pass any further order in relation to Crime No. 3/90, unless the final order passed earlier by the Magistrate has been set aside by the appellate Court. To put differently, the submission made by the learned counsel for the petitioners is that the memorandum dated 21-4-95 seeking the permission for reopening the case for further investigation is not maintainable, as the Magistrate has no jurisdiction to entertain the same, since he already became functus officio after accepting the final report as early as in January, 1993.

4. On this aspect, Mr. Sriramulu, the learned senior counsel appearing for the first informant, who is the petitioner in the impleading petition, as well as the learned Government Advocate appearing for the investigating officer is heard at length.

5. The first informant as well as the accused are close relatives. In fact, A-1 is the younger brother of the first informant, A-4 is the younger sister, A-3 is the husband of A-4, and A-2 is the daughter of A-3. It is also seen from records that there are already civil litigations including partition suit pending between the parties. In this situation, the complaint was given by the first informant to the Inspector General of Police on 12-2-90, who in turn asked the Inspector of Police, CB CID to conduct the investigation. Consequently, on 15-2-90, a case was registered in Crime No. 3/90 for the offences referred to above. During the course of investigation, the first petitioner Ramamurthy (A-1) was arrested and subjected to police custody and even then nothing was recovered. In fact, during police custody, he had heart attack and even before the expiry of the police custody, he was produced before the Court and then, on the direction of the Court, he was sent to hospital. The Inspector of Police, CB CID after investigation on 16-10-92, filed a report stating that despite all efforts taken to detect this case, no clue was available and as such, this case was to be treated as 'undetected'. In the said report, he would further state that if any useful information is received, the case would be reopened and proper action would be taken. On this report, treating the case as 'undetectable', the learned Chief Judicial Magistrate, Srivilliputhur passed an order as 'recorded as undetected' on 8-1-93.

6. However, it is noticed on 12-9-94, on the orders of the Inspector of General of Police, as some more reliable information was received, the Inspector of Police on 21 -4-95 filed a petitioner to permit him to reopen the case for further investigation. On this petition, the learned Chief Judicial Magistrate passed an order permitting reopening of the case for further investigation on the ground that some reliable information was subsequently received by the police.

7. Mr. Packiaraj, the learned counsel for the petitioner, placing reliance on the decision in Ramasubba, K. v. State 1987 Mad LW79 : 1988 Cri LJ 214, would submit that the judicial order passed earlier on 8-1-93 accepting the final report of

the police officer cannot be set aside by the same Magistrate by passing another order permitting the police to reopen the case for further investigation.

8. In reply to his submission, Mr. Sriramulu, the learned senior counsel, citing the decision in *Ram Lal Narang v. State (Delhi Admn.)* : 1979 CriLJ1346 would submit that the Apex Court, while interpreting Section 173(8) Cr.P.C. would permit such application by the police requesting the Magistrate for obtaining permission for further investigation.

9. I have considered the submissions made by the counsel for the rival parties.

10. In the light of the rulings of the Apex Court on this aspect, the submission made by the learned counsel for the petitioners/accused cannot be accepted. This aspect has been covered by the Supreme Court decision in *State of Rajasthan v. Aruna Devi* 1995 SCC 1. This is a case where the police after investigation filed the report on 18-7-81 stating that the complaint was false and the said report was accepted by the learned Magistrate on 23-9-81. However, later on the direction of the Superintendent of Police, further investigation was conducted and the charge sheet was filed against the accused. The learned Magistrate took cognizance on this charge sheet. The said cognizance was quashed by the High Court. While setting aside the judgment of the High Court holding that it was wrong, the Apex Court would observe as follows :

A perusal of the impugned judgment of the High Court shows that it took the view that the Magistrate had no jurisdiction to take cognizance after the final report submitted by police had been once accepted. Shri Gupta, appearing for the appellant, contends that this view is erroneous in law inasmuch as Section 173(8) of the Code permits further investigation in respect of an offence after a report under Sub-section (2) has been submitted. Sub-section (8) also visualises forwarding of another report to the Magistrate. Further investigation had thus legal sanction and if after such further investigation a report is submitted that an offence was committed, it would be open to the Magistrate to take cognizance of the same on his being satisfied in this regard.

11. In view of the above observation, there is no difficulty in coming to the conclusion that even though the report was filed under Section 173(2) Cr. P.C. referring the matter, Section 173(8) Cr.P.C. would permit the police for further investigation and to send another report to the Magistrate, contrary to the earlier report.

12. In view of this decision, the law laid down in 1987 Mad LW 79 : 1998 Cri LJ 214 (Supra) following 1981 MLW 151 (Namasivayam v. Sathar Sayeed) cannot be held to be a good law.

13. Even assuming that the order passed by the Magistrate recording as a 'mistake of fact', 'mistake of law', or 'undetected' is a judicial order, the power of the police officer conferred under Section 173(8) Cr.P.C. cannot be curtailed, as it otherwise would defect the very purpose of re-1 investigation.

14. In the decision reported in 1987 MLW 79 : 1988) Cri LJ 214 (supra), it has been held that Section 173(8) Cr. P.C. would be applicable only in the case where charge sheet was already filed under Section 173(2) Cr.P.C. but not to the case where the referred report was filed and accepted. This position is clearly held to be wrong as per the Apex Court decision in State of Maharashtra v. Sharadchandra Vinayak Dongre : AIR 1995 SC231 , in which it has been held that both the referred report as well as the charge sheet are to be considered as report under Section 173(2) Cr.P.C.

15. However, as clearly observed by the Apex Court in : 1979 CriLJ1346 (supra) that though the police is empowered to make further investigation even after sending the referred report, the police should inform the Court and seek formal permission to make further investigation, when fresh fact comes to light. The relevant observation is as follows:

we think that in the interest of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further

investigation when fresh facts come to light.... Where the police desired to make a further investigation, the police could express their regard and respect for the Court by seeking its formal permission to make further investigation.

This is what exactly done in this case by way of showing regard and respect to the Court. The respondent police approached the Court and sought for permission and the same has been granted by the learned Chief Judicial Magistrate after satisfying himself that fresh information has come to light.

16. It is also relevant to note in this case that even when the report was filed earlier as 'undetected', it was mentioned in the report that if fresh information comes to light, the further investigation would be done. Therefore, it cannot be contended that once it is recorded as 'undetected', neither the Magistrate would have power to permit for further investigation nor the police would have power to reopen the case to make further investigation, especially, when fresh information has been received by the police to detect the offence alleged.

17. In the result, the Revision, which has no merit, is liable to be dismissed and accordingly, the same is dismissed. In view of what is stated above, Crl. M. P. No. 4751/95 stands dismissed and no order is necessary in Crl. M. P. 3525/96.

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