

Neutral Citation No. - 2024:AHC-LKO:49442

Court No. - 13

Case :- APPLICATION U/S 482 No. - 6391 of 2024

Applicant :- Pradeep Kumar Singh

**Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Civil
Sectt. Lko And Another**

Counsel for Applicant :- Vivek Tiwari, Sudhakar Mishra

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Lavania, J.

1. Heard.
2. The present application U/s 482 Cr.P.C. has been filed for the following main relief:-

"Wherefore it is most respectfully prayed that this Hon'ble Court may kindly be pleased to-

i. Quash the impugned order dated 04-07-2024 passed by Additional District and Sessions Judge/Special Judge of E.C. Act, Court No. 4 Sultanpur, on the Application No. 54kha, moved U/s 173(8) of Cr.P.C., contained as Annexure No. 1 in the interest of Justice"

3. The instant FIR was lodged on 02.06.2020 at about 21:50 hours, at Police Station Baldirai District Sultanpur. The Investigating Officer after collecting the evidence during investigation submitted the Charge Sheet under Sections 147 /148/ 149/ 302/ 307/ 308/ 323/ 504/ 506/ 435/ 427/ 336/ 188/ 269 IPC and Section 3 Pandemic Disease, Thereafter, the matter was committed to Sessions where the case was registered as Sessions Trial No. 218 of 2021 (State Versus Darasingh Chauhan and Others), and

thereafter the applicant preferred an application before the Sessions court under Sections 173(8) Cr.P.C. praying therein for further investigation.

4. The Sessions Court namely Additional District and Sessions Judge/Special Judge of E.C. Act, Court No. 4 Sultanpur (in short 'Sessions Court'), after taking note of the observations made by the Hon'ble Apex Court as also the observation made by the Gujarat High Court in the case of *Essar Oil Limited Versus CBI* reported in **2010 Cri.L.J. 224** as also the observation made by this Court in the case of *Kedarnath Verma Versus State of U.P.* reported in **2011 Law Suit (All) 2257**, the trial court has observed that during the hearing the session trial, session judge has no right to exercise powers under Section 173(8) CrP.C. and thereafter rejected the application of the applicant filed under Section 173(8) Cr.P.C. vide order dated 04.07.2024. The order dated 04.07.2024 reads as under:-

"1.On the aforesaid application heard the arguments of learned Counsel of both the parties on earlier date.

2. The applicant Pradeep Kumar Singh has moved aforesaid application dated 22-02-2024 for further investigation in S.T. No. 218/2021 under section 147, 148, 149, 302, 307, 308, 323, 504, 506, 435, 427, 336, 188, 269 IPC, P.S.- Baldirai, distrCt- Sultanpur, State vs Dara Singh and others on the ground that learned ACJM III, Court No. 19, Sultanpur allowed an application under section 173(8) Cr.P.C. moved in its cross case crime no. 129(2020) under Section 147, 148, 149, 307, 323, 325, 395, 435, 504, 506, 188, 269

IPC, P.S-Baldirai, district-Sultanpur after submission of the chargesheet in the case by I.O. vide order dated 26-08-2021. In the said case also proper investigation is required in view of the proposition of law laid down in 2011 Cr.I..J. 4579 Alld.

3. The applicant also raised dispute of territorial jurisdiction of two districts namely AYODHYA and SULTANPUR for the place of occurrence and manipulation of injuries in medical reports to convert the case under serious offences at the instance of Sri Akhilesh Singh I.O. who had enmity due to complaints dated 14-05-2020 to Chief Secretary of U.P. Govt., dated 16-05-2020 to State 11.R.C. and 19-05-2020 to National H.R.C. against him moved on behalf of the applicant. Further non-compliance of directions of S.P Sultanpur dated 06-06-2020, contents of report under Section 151/107/116 dated 17-05-2020 contradictions in the statement of witnesses recorded under section 161 Cr.P.C. and other irregularity allegedly committed by the I.O. have been raised. Prosecution opposed the said application vide its objection dated 28-05-2024.

4. Section 173(8) of the Criminal Procedure Code reproduce below: Section 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 whereupon such investigation, the officer incharge 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- section (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).

5. Admittedly, in the instant case the I.O. has submitted chargesheet and accused persons including

applicant appeared before the court and the case has been committed to the Court of Sessions. The applicant thereafter moved applications under said provision for further investigation of the case on the basis of grounds taking in the application.

6. It is well settled that after taking cognizance of the offence on the basis of police report filed under section 173(2) Cr.P.C. and after appearance of the accused in pursuance of the summons issued, further investigation of the case under the said provision is permitted as held in S.R. Vs State 2004 Cri. L.J. 187 (Kerala). Further investigation means continuation of the earlier investigation and not a fresh investigation or re-investigation as sub-section (8) of section 173 Cr.P.C. clearly envisage that on completion of further investigation, the investigating agency has to forward to the Magistrate a further report or reports regarding the 'further' evidence obtained during such investigation and court is not obliged to hear accused while considering application for further investigation under section 173(8) as held in 2010 Cri.L.J. 224 Gujarat HC Essar Oil Limited vs CBI. As such after committal of the case to the Court of Sessions neither prayer for further investigation nor report or reports of such evidence may be placed before the Court of Sessions. Hon'ble High Court of Allahabad in Kedarnath Verma vs State of Uttar Pradesh, date of decision 20-07-2011, 2011 Law suit (All) 2257 has held that during the hearing of the session trial, session judge has no right to exercise powers under section 173(8) Code of Criminal Procedure directing further investigation in the case as such power can only be exercise by a Magistrate.

7. The proposition laid down in referred cases that is 2011 Cri.L.J.. 4579 and AIR 2019 SC 5233 are not applicable in this case as the facts and circumstances of the case differs. Thus, the application in question deserve to be dismissed."

5. Learned Counsel for the applicant submitted that the allegation made in the FIR are totally false, frivolous and concocted. Investigating Officer during the investigation collected evidence against the applicant and submitted the charge-sheet. However, he could not place any judgment/authority to establish that after committal of the case by Magistrate to court of sessions the prayer for further investigation can be accepted by the Magistrate or the Sessions court.

6. Per contra, learned AGA has submitted that after thorough investigation, charge-sheet has already been filed and learned trial court had taken cognizance and trial is on progress.

7. Considered the aforesaid and perused the record.

8. The procedure as to completion of investigation and the filing of the report has been provided under Section 173 of Criminal Procedure Code 1973. As per the mandate of Section 173(8) of the Code supra, the Magistrate has been empowered to direct further investigation after the report has been submitted by the investigating agency. The relevant portion of the section 173(8) of CrPC is reproduced as under:

"173. Report of police officer on completion of investigation.

(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)."

9. Before dealing with the question in hand, what is also important to bear in mind is that a 'further investigation' as envisaged under section 173(8) CrPC is neither 'fresh investigation' nor it is 're-investigation'. A 'further investigation' means an additional investigation, for, it is a continuation of the earlier investigation and not a 'fresh' or 're-investigation', which starts ab-initio, though the materials, which may have surfaced and unearthed during earlier investigation may be taken into account by the officer or the investigating agency conducting re-investigation. Therefore, it must be noted that there is a fine line of distinction between reinvestigation and further investigation.

10. It is a settled principle of law, that the courts subordinate to the High Court do not have the statutory inherent powers as the High Court does under Section 482 of the Code, and, therefore, must exercise their jurisdiction within the four corners of the Criminal Procedure Code.

11. The Hon'ble Supreme Court, in case titled State through *Central Bureau of Investigation Versus Hemendhra Reddy & Another. Etc.* reported as **MANU/SC/0486/2023** has culled out the distinction between further investigation and re-investigation as under:

56. There is no doubt that "further investigation" and "re-investigation" stand altogether on a different footing. In *Ramchandran v. R. Udhayakumar* reported in **MANU/SC/7684/2008 : 2008:INSC:649 : (2008) 5 SCC 413**, this Court has explained the fine distinction between the two relying on its earlier decision in *K. Chandrasekhar v. State of Kerala* reported in **MANU/SC/0319/1998 : 1998:INSC:209 : (1998) 5 SCC 223**. We quote paras 7 and 8 as under:

"7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation. This was highlighted by this Court in *K. Chandrasekhar v. State of Kerala* [**MANU/SC/0319/1998 :1998:INSC:209 : (1998) 5 SCC 223 : 1998 SCC (Cri) 1291**]. It was, inter alia, observed as follows : (SCC p. 237, para 24)

"24. The dictionary meaning of 'further' (when used as an adjective) is 'additional; more; supplemental'. 'Further' investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that

sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a 'further' report or reports-and not fresh report or reports-regarding the 'further' evidence obtained during such investigation."

8. In view of the position of law as indicated above, the directions of the High Court for reinvestigation or fresh investigation are clearly indefensible. We, therefore, direct that instead of fresh investigation there can be further investigation if required under Section 173(8) of the Code. The same can be done by CB CID as directed by the High Court."

12. The Hon'ble Supreme Court has consistently, in a catena of judgments, held that under the Code, the investigating agency as well as the Trial Court has the power to conduct "further investigation" in terms of Section 173 (8) of the Code, which is in contradistinction to fresh/reinvestigation. The power to order reinvestigation or fresh investigation falls exclusively in the domain of higher courts, that too in exceptional cases. It would be advantageous to refer to the law laid by the Apex Court in *"Mithabhai Pashabhai Patel v. State of Gujarat"*, reported in *MANU/SC/0858/2009 : 2009:INSC:711 : (2009) 6 SCC 332*, the operative portion of which is reproduced as under:

13. It is, however, beyond any cavil that "further investigation" and "reinvestigation" stand on different footing. It may be that in a given situation a superior court in exercise of its

constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a "State" to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction.

15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The pre-cognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code."

13. The Hon'ble Supreme Court of India in the case of *"Vinay Tyagi versus Irshad Ali."* reported as ***MANU/SC/1101/2012 : 2012:INSC:587 : (2013) 5 SCC 762***, has observed as under:

"43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct "further investigation", "fresh" or "de novo" and even "reinvestigation". "Fresh", "de novo" and "reinvestigation" are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection."

45. The power to order/direct "reinvestigation" or "de novo" investigation falls in the domain of higher courts, that too in exceptional cases. If one examines the provisions of the Code, there is no specific provision for cancellation of the reports, except that the investigating agency can file a closure report (where according to the investigating agency, no offence is made out). Even such a report is subject to acceptance by the learned Magistrate who, in his wisdom, may or may not accept such a report. For valid reasons, the court may, by declining to accept such a report, direct "further investigation", or even on the basis of the record of the case and the documents annexed thereto, summon the accused."

14. Therefore, from the law laid down by the Hon'ble Supreme Court of India in the above-cited judgments, it is emphatically clear that there is a distinction between re-investigation and further investigation. It is only further investigation which is enabled in the provisions of the code, and is in sharp contradistinction to reinvestigation. Consequently, the power to order for reinvestigation lies beyond the realm of Courts subordinate to the High Court, i.e. Trial Courts.

15. From the aforesaid, it is apparent that re-investigation cannot be ordered by the courts subordinate to Constitutional Courts, under Section 173 of the Code. The scope of Section 173(8) of Cr.P.C. is clear in this regard that the Magistrate can direct further investigation but the re-investigation of the case can be only ordered by the constitutional courts.

Therefore, the Sessions Court, in passing the order dated 04.07.2024, after considering the judgments on the issue, has not committed any illegality.

16. The instant application for the reasons aforesaid, is accordingly, ***dismissed***. No order as to costs.

Order Date :- 23.7.2024

Jyoti/-