

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE JURISDICTION
CRIMINAL REVISION APPLICATION NO. 459 OF 2008

Ravi Ranjan Arvind Kumar Sharma and othersApplicants

V/s.

Promod Kumar Ram Narayan Thakur and anotherRespondents

Smt. Manjula Rao for Applicant
Mr. Arfan Sait APP for the State.
Ms. Leela D. Malu for respondent no. 1

CORAM : SMT. SADHANA S. JADHAV, J.
DATED : OCTOBER 14, 2015.

PC :

On 9.9.2015, the Advocate for the respondent No.1 had given an undertaking that she would file the written arguments/submissions and therefore the matter be treated as part-heard and posted for hearing on 21.9.2015. The matter was called out in both the Sessions on 21.9.2015. None appeared for the respondent and hence the matter was closed for orders. Even thereafter, this Court waited till 7.10.2015. However, since the written submissions are not filed, the order is passed.

2. Heard learned counsel for the applicant. None appears for the

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respondent. This is a revision application under section 397 and 401 of Code of Criminal Procedure, 1973. Learned counsel for the respondent (Original complainant) is not present. It is clear from the record that on most of the occasions, when the matter was called out, counsel for the respondent has remained absent. On 11/10/2012, matter was adjourned at the request of learned counsel for the respondent. The noting on 13/08/2015 shows that circular was taken by learned counsel for the respondent, however, on that day, she remained absent. On 14/08/2015, matter was adjourned at the request of learned counsel for the respondent. Revision application is of the year 2008 and this Court, by an order dated 01/04/2009 has stayed the proceedings in Sessions Case No. 119 of 2008 pending before Additional Sessions Judge and hence, this Court has proceeded to decide the matter finally. Section 403 of Code of Criminal Procedure, 1973 contemplates as follows.

“Save as otherwise expressly provided by this Code no party has any right to be heard either personally or by pleader before any Court exercising its powers of revision; but the Court may, if it thinks fit, when exercising such powers, hear any party either personally or by pleader.”

2) Such of the facts necessary for deciding revision application are as

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follows.

3) Present applicant has been charge-sheeted for offence under section 498 (A) and 304 (B) r/w 34 of Indian Penal Code in crime no. 203 of 2007. That on 01/12/2007, wife of present applicant had committed suicide. A. D. No. 69 of 2007 was registered. On 02/12/2007, father of deceased lodged a report at Cuffe Parade Police Station, Mumbai against present applicant and others for offence punishable under section 498 (A) and 304 (B) of Indian Penal Code. Applicant was granted pre-arrest bail by the Sessions Court. After completion of investigation, charge-sheet was filed on 24/01/2008. The case was committed to the Court of Sessions on 24/01/2008 and registered as Sessions Case No. 119 of 2008.

4) On 26/02/2008, original complainant had filed writ petition no. 304 of 2008. Petitioner therein was of the opinion that his daughter had died homicidal death and therefore had prayed that an independent enquiry be conducted into the same. It was brought to the notice of the Hon'ble Division Bench that on 24/01/2008, charge-sheet has been filed against accused persons under section 304 (B). Hon'ble Division Bench had observed that:

“If the petitioner has any grievance that the charge against the accused persons should be under section 302, he can approach the concerned

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Court.”

5) Complainant had thereafter filed Misc. Application No. 331 of 2008 before Sessions Court seeking further investigation under section 173 (8) of Code of Criminal Procedure, 1973. Application filed under section 173 (8) by the original complainant was heard and learned Sessions Judge had allowed the said application by directing D.C.B. C.I.D. to conduct further investigation into the matter. Senior P.I. of Cuffe Parade Police Station was directed to hand over the case diary to D.C.B. C.I.D. within two weeks from the date of order and D.C.B. was directed to complete further investigation within 3 months and file further report. Being aggrieved by the said order, applicant has filed present revision application.

6) Complainant had a specific grievance that sister-in-law namely Richa Sharma was not shown as accused in the charge-sheet, although complainant had made allegations against her. Conclusion was drawn by Investigating Officer while filing charge-sheet, specifically shows that in the course of investigation, there was no material to file charge-sheet against proposed accused no. 4 Richa Sharma and therefore, she had not been charge-sheeted. Learned Sessions Court has observed that learned Magistrate had not given

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any notice to the complainant and had passed order under section 209 of Code of Criminal Procedure, 1973, mechanically. Learned counsel for the applicant rightly submits that Code of Criminal Procedure, 1973 does not contemplate any notice to the complainant at the time of filing of charge-sheet. In the eventuality that a Magistrate has to accept or reject 'A' summary or 'C' summary, learned Magistrate shall issue notice to the complainant, however, in the present case, charge-sheet was filed under section 173 of Code of Criminal Procedure, 1973 against accused and therefore it was not necessary to give notice to the original complainant who had set the law into motion. In fact, it is the conclusion of Investigating Officer that there was no material against Richa Sharma and therefore, she was not charge-sheeted. The Court cannot step into the shoes of Investigating Agency unless so called for in the larger interest of justice. Upon perusal of the order of Sessions Court, it appears that Sessions Court has in fact made observations that would encroach upon the powers of investigating agency. Learned Sessions Court has observed that

“Nail clippings of the accused were not collected immediately after registration of crime.”

7) The Court has considered the injuries on the deceased. Post mortem not in fact shows that opinion for the ligature mark found around the neck was reserved. The doctor had not specified the shape of ligature mark. The observations made by learned Sessions Judge are made as if the findings were being recorded after adducing evidence. Moreover, learned Sessions Judge has transferred the investigation to another agency. In fact, section 156 of Code of Criminal Procedure, 1973 contemplates as follows:

“Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.”

“Magistrate empowered under section 190 may order such an investigation to the police station having territorial jurisdiction.”

8. It appears from the records that the complainant Pramod Thakur had filed Criminal Writ Petition No.304 of 2008 in this Court contending therein that an enquiry be conducted with respect to the death of his daughter, which, according to him, was a case of murder. On 26.2.2008, when the matter came up for hearing, the Public prosecutor, upon instructions, had

submitted that the investigation is completed and charge sheet is filed under Section 304B. In view of this, the Hon'ble Division Bench of this Court (Coram: Bilal Nazki & S.A.Bobde, JJ) had granted liberty to the petitioner to ventilate his grievances before the concerned Court. The Hon'ble Division Bench had observed as follows:-

“If the petitioner has any grievance that the charge against the accused persons could have been under Section 302, he can approach the concerned Court.

9. Taking advantage of the order of this Court, the complainant had approached the Sessions Court by filing Criminal Application No.331 of 2008 seeking further investigation under Section 173(8) of Cr.P.C. It is pertinent to note that the case was committed to the Court of Sessions and was registered as Sessions Case No.119 of 2008. It is further pertinent to note that the application seeking further investigation under Section 173(8) was filed by the complainant in person. The application was not filed through the State i.e. the prosecuting agency. It was filed by the defacto complainant. The applicant did not state the particulars for seeking further investigation. The main grievance appeared to be that the investigating agency had not filed

charge sheet against the original accused No.4. The complainant had then filed an additional affidavit giving better particulars rather the gist of the charge sheet. The learned Sessions Judge vide order dated 2.8.2008, had scrutinized the compilation of the charge sheet. The learned Sessions Judge had not only directed further investigation, but had changed the investigating agency. Further investigation was directed to be conducted by DCB, CID, the Senior P.I. Of Cuffe Parade Police Station was directed to hand over whole case diary to DCB, CID within two weeks. The learned Sessions Judge had also given the line of investigation. That once the case was committed to the Court of Sessions, there was no reason for transferring the investigation to DCB, CID.

10. In the case of **Reeta Nag vs. State of West Bengal & Ors. Reported in 2010 AIR SCW 476**, the Hon'ble Apex Court had held as follows :-

“The Magistrate cannot suo motu direct a further investigation under Section 173(8) Cr.P.C. or direct a re-investigation into a case on account of the bar of Section 167(2) of the Code.”

The other course of action open to the Magistrate, as indicated by the High Court, was to take recourse to the provisions of Section 319 of the Code at the stage of trial.

11. In the case of **State of Maharashtra vs. Prataprao Mahesh Baban (W.P.No.3233 of 2009)**, this Court had held that the complainant will not have locus standi to file an application for further investigation in the Sessions Court, the Sessions Court does not have power or jurisdiction to entertain an application filed by the defacto complainant after filing of charge sheet under Section 173(2) seeking further investigation by CID under Section 173(8) of Cr.P.C. This Court had further held that the Hon'ble Apex Court has held that the power of deciding choice of the agency would be the High Court under its inherent jurisdiction and not with the subordinate Courts which is also observed by the Hon'ble Apex Court in the earlier judgments. That the Sessions Court could not direct the CID to carry out further investigation which power could be exercised only by the High Court under Article 226 of the Constitution of India or under Section 482 of Cr.P.C. or by the Apex Court under Article 32 and 142 of the Constitution of India.

12. It is clear that the Sessions Court was swayed by the filing of the application by the original complainant and had exercised excessive

powers which has not only caused prejudice to the accused, but is an abuse of process of law. No Court can step into the shoes of the investigating agency unless such circumstances are warranted. In the present case, the Sessions Court has literally guided the investigation. In fact, even after the commencement of the trial, the prosecution as well as the Court has ample powers to consider additional material if necessary. That in view of the above discussion, the order passed by the learned Sessions Court dated 2.8.2008 deserves to be quashed and set aside. The applicants are ready to face charges for the offences for which they have been charge sheeted under Section 304B and 498A read with Section 34 of IPC.

8) In the present case, investigation was completed and charge-sheet was filed by Cuffe Parade Police Station. There was no specific reason for entrusting the investigation to D.C.B. C.I.D. under section 173 (8) of Code of Criminal Procedure, 1973. Learned Sessions Judge has been oblivious of the fact that application seeking further investigation under section 173 (8) was filed by the complainant in his personal capacity. Said application was not filed through prosecution and at that stage, complainant had not attained any locus under section 301 of Code of Criminal Procedure, 1973. In fact, it was incumbent upon the Sessions Court to obtain say of the investigating agency,

consider the submissions made by the prosecution and then pass an appropriate order, however, in the present case it appears that learned counsel for the original complainant and the accused have been heard by the Sessions Court. The matter was argued on merits and beyond the ambit of section 173 (8) of Code of Criminal Procedure, 1973. There is nothing in the order to indicate that investigating agency had been heard by the learned Sessions Court. Learned Sessions Court had taken into consideration the report filed under section 173 of Code of Criminal Procedure, 1973. Learned Sessions Judge has made a roving enquiry into the allegations made by the complainant and has passed an order under section 173 (8) of Code of Criminal Procedure, 1973, without jurisdiction.

9) Taking into consideration all these aspects and the fact that applicant is prepared to face the trial on the basis of original charge-sheet filed on 24/01/2008, order passed by learned Sessions Judge deserves to be quashed and set aside. In any case, incident is of the year 2007 and it would not be appropriate on the part of this Court to send the matter for further investigation after eight years. Hence, following order.

ORDER

- (i) Revision application is allowed in terms of prayer clause (b).
- (ii) The impugned order dated 02/08/2008 passed in Misc. Application No. 331 of 2008 in Sessions Case No. 119 of 2008 is hereby quashed and set aside.
- (iii) Learned Sessions Court shall proceed with the matter in Sessions Case No. 119 of 2008.
- (iv) Learned Sessions Court shall frame the charge within 8 weeks from the date of this order and proceed with the trial in accordance with law.
- (v) Office to communicate this order to the concerned Court.
- (vi) Rule is made absolute in the above terms.

(SMT. SADHANA S. JADHAV, J.)