

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2015

C O R A M

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Cr1.R.C.No.1290 of 2013

&

M.P.No.1 of 2013

P. Ravindranath ...Petitioner/(proposed Accused)

Vs.

1.K. Chandragandhi

2.The Inspector of Police,
Udumalpet Police Station,
Crime No.849 of 2009
Tiruppur District.

3.Balamurugan

... Respondents/Defacto-
Complainant, complainant
and Accused)

PRAYER: Criminal Revision Case is filed under Sections 397 and 401 of Code of Criminal Procedure to call for the records relating to the order dated 04.06.2013 made in C.M.P.No.9144 of 2012 in C.C.No.280 of 2012 on the file of the learned Judicial Magistrate No.1, Udumalpet and set aside the same by allowing this criminal revision petition.

For Petitioner : Mr.N.Manokaran

For Respondents No.1 : Mr.G. Ravikumar

For Respondents No.2 : C.Emalias
Addl. Public Prosecutor

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O R D E R

This Criminal Revision Petition has been filed to call for the records relating to the order dated 04.06.2013 made in C.M.P.No.9144 of 2012 in C.C.No.280 of 2012 on the file of the learned Judicial Magistrate No.1, Udumalpet and set aside the same by allowing this criminal revision petition.

2. Heard Mr.N.Manokaran, learned counsel appearing for the petitioner, Mr.G.Ravikumar, learned counsel appearing for the first respondent and learned Additional Prosecutor appearing for the second respondent.

3. It is seen that on a complaint lodged by one K.Chandragandhi, the respondent police registered a case in Crime No.849 of 2009 on 22.04.2009 under Sections 120(B), 467, 477 I.P.C against (1). Ravindranath and (2). Branch Manager, ICICI Bank, Udumalpet.

4. The crux of the allegation in the FIR is that Ravindranath (A1) had given a cheque to the defacto complainant and when the cheque was presented to the ICICI bank for clearance, the Branch Manager returned the cheque on the ground "signature does not tally". It appears that the defacto complainant had taken a photo copy of the cheque given by Ravindranath before presentation and when she compared the photo copy with the returned cheque, she found that the signature in the photo copy differed from the signature in the cheque. Therefore, the defacto complaint suspected that Ravindranath and the Manager of ICICI bank must have conspired to materially alter the signature in the original cheque, so that, it could be returned on the ground "signature does not tally" rather than on the ground of "insufficiency of funds".

5. Be that as it may, the respondent police conducted the investigation and filed a final report before the Judicial Magistrate No.1, Udumalpet arraying one Balamurugan, the Branch Manager of ICICI Bank, Udumalpet Branch as accused, but, did not include Ravindranath as an accused. The final report was filed on 12.09.2012 for offences under Sections 467 and 477 I.P.C as against Balamurugan alone.

6. The learned Magistrate did not issue notice to the defacto complainant and therefore, the defacto complainant did not know that Ravindranath has been excluded in the final report. The learned Magistrate took cognizance of the offence and the case was numbered as C.C.No.280 of 2012 and process was issued only against Balamurugan. When K.Chandragandhi (defacto complainant) came to know about it, she filed an application under Section 173 (8) Cr.P.C for further investigation. The said application was numbered as C.M.P.No.9144 of 2012 and by order dated 04.06.2013, further investigation was ordered by the learned Magistrate. Challenging the order dated 04.06.2013 passed in C.M.P.No.9144 of 2012 in C.C.No.280 of 2012, Balamurugan (A1) approached this Court in CrI.R.C.No.1007 of 2013 on various grounds. This Court dismissed the CrI.R.C.No.1007 of 2013 by a well considered order on 16.10.2014.

7. Simultaneously, it appears that Ravindranath, fearing that he may be implicated in the further investigation proceedings, filed CrI.R.C.No. 1290 of 2013, challenging the same order dated 04.06.2013

passed in C.M.P.No.9144 of 2012 by the learned Judicial Magistrate, Udumalpet. Unfortunately, the pendency of Crl.R.C.No.1290 of 2013 was not brought to the notice of the learned Judge who dealt with Crl.R.C.No.1007 of 2013. While so, the defacto complainant approached this Court in Crl.O.P.No.16082 of 2015 for a direction to the police to complete further investigation and file an additional report.

8. Only at that juncture, it came to light that the police were not able to proceed with further investigation because this Court, while admitting Crl.R.C.No.1290 of 2013, had granted interim stay of the order dated 04.06.2013 in C.M.P.No.9144 of 2012. Therefore, this Court referred the matter to My Lord, The Hon'ble Chief Justice for a direction to list the Crl.O.P.No.16082 of 2015 along with Crl.R.C.No.1290 of 2013 and both the matters to be posted before one Court for disposal. On the orders of My Lord, The Hon'ble Chief Justice, Crl.R.C.No.1290 of 2013 and Crl.O.P.No.16082 of 2015 were directed to be posted before this Court and thus, these two cases were listed today.

9. Mr.N.Manokaran, learned counsel appearing for the petitioner in Crl.R.C.No.1290 of 2013, questioned the very locus standi of the defacto complaint to file an application under Section 173(8) Cr.P.C and in support of his contention, he relied upon the judgment of the Hon'ble Supreme Court in Reeta Nag Vs. State of West Bengal and others reported in (2009) 9 Supreme Court Cases 129, wherein, in para - 26, it is stated as follows;

" 26. In the instant case, the investigating authorities did not apply for further investigation and it was only upon the application filed by the de facto complainant under Section 173(8) was a direction given by the learned Magistrate to reinvestigate the matter. As we have already indicated above, such a course of action was beyond the jurisdictional competence of the Magistrate. Not only was the Magistrate wrong in directing a reinvestigation on the application made by the de facto complainant, but he also exceeded his jurisdiction in entertaining the said application filed by the de facto complainant."

10. Following the judgment of Reeta Nag's case, several Judges of this Court have held that a defacto complainant cannot file an application under Section 173(8) Cr.P.C.

11. The Hon'ble Supreme Court in Vinay Tyagi Vs. Irshad Ali Alias Deepak and others reported in (2013) 5 Supreme Court Cases 762 had the occasion to consider the scope of 173(8) Cr.P.C and under those circumstances, the Hon'ble Supreme Court referred to Reeta Nag case and in para -39, it is stated as follows;

"39. The contrary view taken by the Court in Reeta Nag ²² (22 Reeta Nag V. State of W.B., (2009) 9 SCC 129: (2009) 3 SCC (Cri) 1051) and Randhir Singh²⁴ (24. Randhir Singh Rana V. State (Delhi Admn.), (1997) 1 SCC 361) do not consider the view of this Court expressed in Bhagwant Singh²¹. (21. Bhagwant Singh V. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267). The decision of the Court in Bhagwant Singh ²¹ in regard to the issue in hand cannot be termed as an obiter.; The ambit and scope of the power of a Magistrate in terms of Section 173 of the Code was squarely debated before that Court and the three-judge Bench concluded as aforenoticed. Similar views having been taken by different Benches of this Court while following Bhagwant Singh ²¹, are thus squarely in line with the doctrine of precedent. To some extent, the view expressed in Reeta Nag ²², Ram Naresh ²³ and Randhir Singh ²⁴, besides being different on facts, would have to be examined in light of the principle of stare decisis."

12. On first principles of Criminal Law, the power of the police to conduct investigation does not automatically come to an end, when once a final report is filed before the Court. In Ram Lal Narang Vs. State (Delhi Administration) (1979) 2 Supreme Court Cases 322, the Hon'ble Supreme Court was dealing with the case under the Code of criminal procedure, 1898 where there was no specific provisions akin to Section 173 (8) Cr.P.C, 1973. In the said judgment, the Hon'ble Supreme Court has stated that:

" 15.

Ordinarily, the right and duty of the police would end with the submission of a report under Section 173(1) CrPC upon receipt of which it was up to the Magistrate to take or not to take cognizance of the offence. There was no provision in the 1898 Code prescribing the procedure to be followed by the police, where, after the submission of a report under Section 173(1) CrPC and after the Magistrate had taken cognizance of the offence, fresh facts came to light which required further investigation. There was, of course, no express provision prohibiting the police from launching upon an investigation into the fresh facts coming to light after the submission of the report under Section 173(1) or after the Magistrate had taken cognizance of the offence."

13. Section 173(8) was included in the 1973 Code, not for conferring a new power on the police to conduct further investigation but it was intended to declare the power which the police already had for further investigation as recognized by the Supreme Court in Ram Lal Narang (Supra). The issue of getting formal permission from the Magistrate became a convention and in Vinay Tyagi case, the Hon'ble Supreme Court did not want to upset the applecart, as could be seen from para - 49 of the said judgment.

" 49. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct "further investigation" or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct "further investigation" and file "supplementary report" with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the court to conduct "further investigation" and/or to file a "supplementary report" will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process."

14. Very recently, the Hon'ble Supreme Court, in an unreported judgment in Chandra Babu @ Moses V. State Through Inspector of Police & others through the Inspector of Police, had to deal with some what similar situation where the defacto complainant filed a protest application when the police filed a closure report. In the said judgment, the Hon'ble Supreme Court has considered Vinay Tyagi 's case as well the judgment in Reeta Nag's case.

15. Mr.N.Manokaran, learned counsel appearing for the petitioner contended that in all these cases, the Supreme Court had only recognised the power of the Magistrate to order further investigation but the question whether such a power could be exercised at the instance of the defacto complainant, has not been categorically decided.

16. The learned Additional Public Prosecutor brought to the notice of this Court, the judgment of the Hon'ble Supreme Court in Azija Begum Vs. State of Maharashtra and another reported in (2012) 3 Supreme Court Cases 126, wherein, further investigation was ordered on an application filed by the defacto complainant which order was ultimately upheld by the Hon'ble Supreme Court. The issue raised by Mr.N.Manokaran, learned counsel need not detain us any further since under Section 173(8) Cr.P.C. does not give power to the Magistrate to order further investigation. As said earlier, the power to conduct further investigation already lies in the hands of the police and that power is only recognised by Section 173 (8) Cr.P.C. In other words, the police can suo - motu conduct further investigation under Section 173(8) Cr.P.C ofcourse after getting formal leave of the Magistrate or the Magistrate can also order further investigation by virtue of the powers under Section 156 (3) Cr.P.C.

17. In Bhagwant Singh V. Commr. of police, (1985) 2 SCC 537, the Supreme Court created a right for the defacto complainant to file a protest application on which a further investigation can be ordered by the Magistrate.

18. In view of the facts obtaining in this case, the learned Magistrate should have issued notice to the defacto complainant before accepting the final report as Ravindranath whose name figured in FIR was excluded in the final report. This not having been done, the right of the defacto complainant to file a protest application has been foreclosed. Viewing the matter from any angle, this Court is unable to countenance the submissions of Mr. Manokaran, learned counsel appearing for the petitioner.

19. On the contrary, this Court is of the view that the petitioner Ravindranath has no locus standi to challenge the order of further investigation by the Magistrate, because, no accused has right to pre-decisional hearing before commencement of investigation. The petitioner cannot pre-suppose that he would be made as an accused. May be, further investigation may even exonerate all the accused or may also include some new accused. Therefore, the Criminal Revision Case filed by Ravindranath is devoid of merits. Accordingly, the Criminal Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Inspector of Police,
Udumalpet Police Station,
Crime No.849 of 2009
Tiruppur District.
2. The Judicial Magistrate No.1,
Udumalpet.
3. -do- Through The Chief Judicial Magistrate,
Tiruppur.
4. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.N. Manokaran, Advocate, S.R.No.38313
+lcc to Mr.G. Ravikumar, Advocate, S.R.No.38426

KSJ(CO)
EU(17/08/2015)

Crl.R.C.No.1290 of 2013

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