

HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Revision Case No.784 of 2013

ORDER:-

This revision case is directed against the orders of the learned V-Additional District and Sessions Judge (FTC), Ranga Reddy District, in CrI.M.P.No.203 of 2012 in S.C.No.56 of 2012 dated 26-11-2012, by and under which the petition filed by the revision petitioner under Section 173 (8) Cr.P.C., to direct the 1st respondent/investigating agency to re-investigate the crime for the offences punishable under Sections 302 and 498-A IPC.

2. The revision petitioner is the *de facto* complainant and respondents No.2 to 5 are the accused in Cr.No.310 of 2010, which ultimately came to be registered as S.C.No.56 of 2012. The revision petitioner is the father of Sirisha (hereinafter, referred to as 'the deceased'). The respondent/accused are the husband and relations of the deceased. Initially, the revision petitioner filed a complaint with the 1st respondent stating that his deceased daughter committed suicide, that the deceased was a sensitive woman, that the revision petitioner was informed about the death of the deceased by the respondent/husband, that he has no doubt about the death of the deceased and that his deceased daughter committed suicide unable to bear stomach pain and due to mental strain. This complaint was made on 30-10-2010. The investigating agency recorded the statement of the revision petitioner/*de facto* complainant under Section 161 Cr.P.C., which was similar to the complaint made by him. Subsequently, however, on 24-11-2010, on further investigation, the investigating agency has altered the Section of Law from Section 174 Cr.P.C., to Sections 498-A and 306 IPC. The respondents/accused are alleged to have committed the offences and hence charge sheet has been filed.

3. After complying the mandatory requirements, trial was taken up and 12 witnesses are already examined. When the case was posted for the evidence of Investigating Officer, the *de facto* complainant filed

Crl.M.P.No.203 of 2012 under Section 173 (8) Cr.P.C., seeking a direction to the 1st respondent/SHO, Balanagar P.S., to re-investigate the crime, which attracts Section 302 IPC. Before filing that, the *de facto* complainant filed W.P.No.20092 of 2012 and this Court by order dated 04-07-2012 dismissed the writ petition holding that the entire investigation is completed and the police filed charge sheet and the case was taken on file as S.C.No.56 of 2012, that the scheme of Code of Criminal Procedure does not provide for re-investigation of the case when the charge sheet was already filed, but however, the police can conduct investigation and the petitioner can as well file an application in the Court under Section 173 (8) Cr.P.C. Thereafter, the petition came to be filed.

4. The contention of the revision petitioner is that he obtained information from the Police Department which was to the effect that four witnesses who are supposed to have been examined were not examined during the course of investigation. This information was obtained by the *de facto* complainant under RTI Act and the Department informed him that the enquiry revealed that the charge sheet was already filed; as such there is no collection of further evidence to alter the section of law. It is further contended that it is a fit case where re-investigation need to be done for effective and complete justice.

5. On the other hand, learned Counsel appearing for the respondents/accused submits that as has been observed by the High Court in the writ petition, there is no procedure contemplated in Cr.P.C., which provide for a *de facto* complainant to seek for re-investigation into the crime after the trial is commenced.

6. A perusal of the record shows that the rejection of the application filed by the *de facto* complainant by the learned Sessions Judge is based on proper appreciation of the factual and legal position. The learned Sessions Judge has relied upon the decision reported in **REETA NAG v. STATE OF WEST BENGAL AND OTHERS (2009) 9 SCC 129** wherein it is observed at paragraph Nos.25, 26 and 27 as under:-

“What emerges from the above mentioned decisions of this Court is that once a charge sheet is filed under Section 173 (2)

Cr.P.C., and either charge is framed or the accused are discharged, the Magistrate may, on the basis of a protest petition, take cognizance of the offence complained of or on the application made by the investigating authorities permit further investigation under Section 173 (8). 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.

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 re-investigation 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.

Since no application had been made by the investigating authorities for conducting further investigation as permitted under Section 173 (8) Cr.P.C., 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. We, therefore, see no reason to interfere with the order of the High Court since it will always be available to the Magistrate to take recourse to the provisions of Section 319 if any material is disclosed during the examination of the witnesses during the trial.”

7. Applying the above principles to the facts of the case in hand, it is held that it is not open to the revision petitioner/*de facto* complainant to seek re-investigation into the crime long after the investigation was concluded, charge sheet was filed, charges were framed, trial was taken up and 12 witnesses have already been examined. In that view of the matter, the impugned order does not suffer from any irregularity or illegality warranting any interference. There are no merits in the revision and the same is liable to be dismissed.

8. In the result, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, pending in this revision shall stand closed.

21st August, 2015
smr

M.S.K.Jaiswal, J